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ANCIENT
CRIMINAL TRIALS
IN SCOTLAND.

VOL. III.—PART II.

1615—1624.

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1615-1624

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ANCIENT
CRIMINAL TRIALS

IN SCOTLAND:
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CRIMINAL TRIALS

FROM THE ORIGINAL RECORDS AND MSS.
IN SCOTLAND.
WITH HISTORICAL ILLUSTRATIONS.

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ROBERT PITTMAN, ESQ.
1815-1824

VOL. II.
PART SECOND

EDINBURGH:
PUBLISHED FOR THE BANNATYNE CLUB
MDCCCXXIII

**ANCIENT
CRIMINAL TRIALS
IN SCOTLAND;**

COMPILED
FROM THE ORIGINAL RECORDS AND MSS.,
WITH HISTORICAL ILLUSTRATIONS, &c.

BY
ROBERT PITCAIRN, ESQ.

VOL. III.
PART SECOND.

EDINBURGH:
PRINTED FOR THE BANNATYNE CLUB.
M.DCCC.XXXIII.



THE present PART closes this COLLECTION of the leading TRIALS which occurred before THE HIGH COURT OF JUSTICIARY, during the eventful reign of KING JAMES VI.

PART VIII. contains numerous Cases of considerable interest and novelty, and throws much light on various public transactions, and also on many of the private occurrences of the period immediately preceding the demise of that monarch. There are, however, so many remarkable Trials contained in it, that it would encroach too much on the limits of a brief notice, to recapitulate a few of the leading Cases.

Having collected a great mass of materials, in the course of preparing the present work for publication, the Editor has selected from them a number of ORIGINAL PAPERS, believing that they would be esteemed a suitable accompaniment to this concluding Volume. He has, therefore, printed them in an APPENDIX, which will be found materially to illustrate many of the preceding Trials. Among others, he has been so fortunate as to have discovered the only documents which remained to clear up the extraordinary Trial of MR THOMAS ROSS, a poor Clergyman of a very respectable family, but a maniac, who was mercilessly put to death, under form of Law, by the special warrant of King James VI, for *writing* a Pasquil against the Scottish Nation. This pasquinade, it may here be remarked, was neither printed nor in anywise circulated by the author, but was simply affixed to the door of St Mary's Church, Oxford; from which it was almost instantly taken down by a student, and delivered to the Vice Chancellor, who transmitted it, without delay, to Court.

The remainder of the APPENDIX will be delivered with the INTRODUCTORY PART, which embraces the Criminal procedure during the reigns of KING JAMES IV, KING JAMES V, and QUEEN MARY.

The Editor does not, at present, expect to finish that arduous undertaking until the month of November or December, 1831. It is his intention to prepare accurate Indexes, which will be delivered, along with Title-pages, &c. for the whole work. When concluded, the Collection will form THREE large VOLUMES.

In reply to several enquiries, the Editor begs to notify, that he purposes to close this COLLECTION OF TRIALS with PART IX.

GENERAL REGISTER HOUSE,
15th December, 1830.

THE concluding portion of the present COLLECTION has occupied the anxious attention of the Editor, for a period of above twelve months beyond the time he had been led to anticipate, when the NINTH PART was published.

Fortunately, the Editor had, during the progress of this WORK, amassed a great variety of materials from authentic sources, illustrative of many important events connected with the history of the reigns of KING JAMES V. and MARY QUEEN OF SCOTS; which eventually have proved of much use, in elucidating the Criminal proceedings of these reigns. Besides availing himself of these, however, he found it necessary to consult many of the public Records, the MSS. in the Library of the Faculty of Advocates, and other Collections of original documents, which required a considerable expenditure of time, besides much minute, laborious, and persevering research.

The result of these investigations is now laid before the Public; and it is perhaps not too much for the Editor to hope, that, in the view of rendering this work as complete as possible, the Subscribers may concur with him in thinking, that the additional time, thus expended, has not been altogether unprofitably employed.

In fulfilment of the proposal made at the commencement of this arduous undertaking, a very copious and elaborate GENERAL INDEX is now given along with this Part, which will be found to comprehend all that is practically useful to those who are likely to consult this Collection, whether for general reading and information, or for purposes of legal, historical, antiquarian, or genealogical investigation.

Owing to the interest excited by the large Collections made by the Editor, and the body of evidence which has been published in some of the former Parts of this work, in reference to GOWRY'S CONSPIRACY, he has deemed it his duty to render the whole still clearer and more generally acceptable, by endeavouring to procure accurate Plans of the scene of that remarkable transaction. This he has fortunately been able successfully to accomplish, and that, too, from the most authentic source of information; as his friend MR DAVID MORISON, Secretary to the Literary and Antiquarian Society of Perth, had occasion, a few years ago,

to get drawings and ground-plans made, from surveys and sketches taken on the spot, previous to the pulling down of Gowry House, in the year 1807, to make way for the Prison and County Buildings, in Perth. These Plans accompany Mr Morison's ingenious Dissertation, which has been published in that Society's Transactions. The ultimate views of THE RUTHVENS and their associates, in embarking in so hazardous a plot, will likely for ever remain as inexplicable a mystery as hitherto ; but whatever may be considered by the future historian to have been the probable schemes of these rash youths, it is perhaps not arrogating too much to affirm, that the field of enquiry may now be considered as greatly narrowed ; and that the circumstances, as well as the truth and reality of that Conspiracy, may henceforth be considered as matters of historical certainty.

To the politeness of FRANCIS GRANT, Esquire, S.A., the Editor is indebted for the use of the accompanying valuable engraving of GOWRY HOUSE, which was carefully prepared, under his own inspection, from the only authentic sketch of that memorable place which is known to exist.

With regard to the contents of this SUPPLEMENTARY PART, there will be found, in addition to many curious and valuable Trials of a miscellaneous description, a considerable accession of original historical materials, illustrative of the progress of THE REFORMATION OF RELIGION IN SCOTLAND ; a very important APPENDIX to the reign of KING JAMES V., compiled with the strictest care from the valuable Records of the Privy Seal, and the Accounts of the Lord High Treasurer of Scotland ; proceedings against the PAPISTS, JESUITS, &c. ; and numerous original and interesting Documents relative to the Murders of DAVID RICCIO and KING HENRY DARNLEY, &c., many of which are now for the first time laid before the public.

Owing to the manner originally adopted in publishing this work, it has been found necessary to divide the FIRST VOLUME into TWO PARTS. Particular directions for the Binder are printed on the back of the prefixed Title, to prevent the possibility of mistakes being committed in the arrangement of the Book into separate Volumes.

GENERAL REGISTER HOUSE,
25th March, 1833.

Treasonable Fire-raising in Coal-pits.

Jun. 10.—JOHNNE HENRIE in Littill Fauſide.

Dilaitit, accuſet, and perſewet, be Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our ſouerane lord, for his hienes intereis, of the crymes vnder-writtin, viz.

FORSAMEKILL AS, albeit be the 146 Act of our Souerane lordis tuelf Parliament, haldin at Ed^r vpon the fyft day of Junij, 1592 zeiris, makand mentioun that his Maieſtie and eſtattis, for þe better pwneifchment of the wiked cryme of ſetting ffyre in coil-heuches¹ be ſum vngodlie perſones, vpon privat revenge and diſpyte, haif pairfoir Statute and Ordanit, be vertew of the ſaid Act of Parliament, that þe committing of the ſaid cryme, in ony tyme paireftir, fall be Trefſone; and that the committeris of þe ſaid haynous and deteſtable cryme, being ordourlie convict pairof, fall ſuffer and vnderly ſic pwneifchment in pair bodeyis, landis, and guidis, as is dew be the law in cauſes of Trefſone: As in the ſaid Act of Parliament at lenth is contenit. Nochtwithſtanding quhairof, it is of verritie, that þe ſaid John Henrie, being a ſervand and workman within the Coil-heuch of Littill Fauſyde, and pairthrow beſt acquaintit with the haill ſecreit paſſages and pairtis of the ſaid heuche, haifing conſauet ane deidlie rancour and evill will aganis Mungo M^ccall, now of Littill Fauſyde, becaus þe ſaid Johnne had nocht that libertie and commandiment vnder him quhilk he had vnder Johnne Levingſtoun, his prediceſſour; in a devillifch diſpyte, and to þe wrak and diſtruction, nocht only of the ſaid Mungois coil-heuch, bot to þe grit preiudice of þe cuntrie and Cowmounwelthe, in the monethis of ffebruar, March, and Apryle, in the zeir of God I^m.Vj^c. and fourtene zeiris, at the leiſt, in ane or vther of the ſaidis monethis, immediatlíe eftir þe ſaid Mungo M^ccall acquyret the rycht and poſſeſſioun of the ſaid coilheuch, come, vnder ſilence and clud of nycht, to þe ſaid Coilheuch of Littil Fauſyde, and enterit pairintill be ane previe hoill and paſſadge of his awin, and maiſt treſſonablíe pat ffyre within the ſaid heuche, of purpois and intentioun to burne and diſtroy þe ſamyn and haill coillis being pairintill: Lyk as, for the gritter ſecrecie and doun-halding of the ſaid ffyre, he nychtlie, be þe ſpace of tuentie dayis togidder, reſoirtit to the ſaid heuche in ſecreit maner, ffed, and nureifchet þe ſaid ffyre, ſtoppit þe haill air and vent hoillis with ſtray,² quhairthrow þe ſaid ffyre ſould nocht be diſcoverit: Be reaſone of the quhilk ffyre, and ſtopping of the haill air and vent hoillis, thair arraiſe ſic ane peſtiferous and foule air within the heuche, that nane of þe workmen war able to work pairintill; quhairvpon, and be þe pulling furth of ane bottell of ſtray furth of ane hoill in the ſaid heuche, quhilk hoill was callit þe ſaid Johnne Henreis vue,³

¹ Coal-pits.² Straw.³ Perhaps for view, prospect.

the vehemencie of þe said ffyre was discoverit. Be þe committing of þe quhilk detestable fact, he hes committed maist haynous and vnpardoneable Treffone.

The pannell denyis the Dittay; and takis instrumentis that na pairtie infistis in his persute bot my lord Aduocat; and that thair is nocht ane fuorne Dittay. My lord Aduocat producet Thomas Cochrane, his lordschipis informer, quhais aithe he desyret to be tane, anent the treuth of the Dittay.

Thomas Cocherane, greif¹ at Littill Faufyde, being fuorne vpone the verritie of the Dittay producet be my lord Aduocat, declairit that Johnne Henrie was giltie of þe cryme contenit pairintill, bot he wald nawayis follow nor persew him for the samyn, in respect he had na intereis; quhairvpoun my lord Aduocat askit instrumentis.

The Assyse being fuorne, my lord Aduocat takis instrumentis of thair sueiring; and protestis for Errour gif thay acquit.

VERDICT. The Assyse, being ryplie and at lenth advyset thairwith, togidder with the taikynis² and Depositiones producet for instructing thairof, be pluralitie of voitiss, ffand, pronuncet, and declairit, be the mouthe of Alexander Penman in Lyttill Faufyde, chancellor, the said pannell, to be ffylet, culpable, and convict of the treffonable cryme specifeit in the said Dittay.—SENTENCE. To be tane to the Mercat-croce of Ed^r, and thair to be hangit vpone ane gibbet, quhill he be deid; and his heid thaireftir to be strukin frome his body, and put vpone ane prik, fixt and set vp vpone the landis of Littill Faufyde, besyde the said Coil-heuche: And all his moveable guidis, gif he ony hes, to be escheit, &c.

Namesucken—Slaughter.

Jun. 22.—ALEXANDER DAUIDSOUN, in Wester Kerse.

Dilaitit of the crewall and vnnaturall Slauchter of vmquhile George Suord, his sone in law, be streking of him with ane lance-stalff in the bellie, and gorryng his puddingis, within the said George awin duelling hous in Wester Kerse, vpone the xxix day of Maij last: Off the quhilk straik he deceiffit, vpone the tuelf day of Junij instant; committit vpone set purpois, prouisioun, and foirthocht ffellonie, in hie and manifest contempt of his hienes authoritie and lawis.

PERSEWARIS, Patrik Suoird and Johnne Suoird, as brether.

VERDICT. The Assyse, being ryplie and at lenth advyset thairwith, togidder with the said Alex^r his Judiciall Confessioun and acknowledgement of the said haynous cryme to be of verritie, and his penitencie for the samyn, be pluralitie of voittiss, ffand, pronuncet, and declairit the said Alexander Dauidfoun to be ffylet, culpable, and convict of the said crewall Slauchter.—SENTENCE. To be tane to the Castell-hill of Ed^r, and thair to be heidit; and his haill moveabill guidis to be escheit, &c.

¹ Grieve; overseer.

² Proofs; tokens; evidence.

Mutilation and Demembration.

Jun. 30.—JOHNE PITSCOTTIE of Loncardie, Colene Pitscottie, his eldest sone.

Dilaitit of airt and pairt of the Mutilatioun of Margaret Stewart, spous to Thomas M'duff of Glenelwart, of hir richt airme ; committit vpone the xxix day of Auguft, 1613.

PERSEWARIS, Margaret Stewart, Thomas Duff of Glenelwart, hir spous.

The perfewaris paffis fra the perfute of the pannell, for the crymes contenit in the Letteris, *pro loco et tempore*. Quhairupone the pannell askit instrumentis.

THE Justice continued this caſe 'to the thrid day of the Air (of Perth) or foner, vpone xv dayis wairning.' Robert Creichtoun, brother to the Laird of Innernytie, became cautioner for their appearance, &c.

**High Treason—Taking and Detaining the Castle of Dynniebaig
—Resisting King's Lieutenant, &c.**

[As the Editor has already entered ſo fully into the ſubject of THE REBELLION IN ILAY by *Sir James Maconeill*, &c., it is unneceſſary to occupy further ſpace here ; more eſpecially as *Mr Gregory's* *Historical Researches*, already far advanced, are excluſively devoted to the elucidation of ſuch points.¹

The following intereſting memorials have been preſerved by *Calderwood*, in his MS. Church History,² which the Editor believes will prove an acceptable illuſtration of this ſubject. They have been diſcovered ſince the former ſheets were ſent to preſs. 'SIR JAMES MCKONNELL eſcaped out of the *Caſtle of Edinburgh*, where he had been wairdit the ſpace of eighteen years, upon the 24 of Maij, the day after *Angus Ooge*, his brother, and eight or nine of his complices, were brought to *Edinburgh*. It was thought that he eſcaped not without the privity of theſe who had credit. In the beginning of July, he entered in *Ila*, with a number of men of THE ISLES, and, within three or four dayes after his landing, took the *Caſtle*, ſlew the *Captain* and other three or four. His forces increaſing, he went out of and ſpoiled the lands belonging to the *Earl of Argyle*, compelled the tenants to pay him their maills and duties, and keepest about him five or fix hundreth men. Upon the eight of July, *Angus Oge*, brother to *Sir James McKonnell*, and his complices, were hanged at the Market Croſs of *Edinbr*. They affirmed that *George Grahame* affured them, in the *Chancellours* and *Counſells* name, that they would procure the Kings favour and ſafety, both of their lives and lands, if they would render the pledges ; and deſired them to keep the Houſe till the King's favour were obtained, or elis they had not made reſiſtance to the King's Lievtennant. Becauſe the ſaid *George* was not troubled by the Counſell or any other, the people thought hard of it.—Aug. 16. The *Earl of Argile* came to *Edinburgh*, ſent from Court be THE KING to paſſe upone *Sir James McKonnell*. He had Commiſſione to warne and raiſe the Sherifdomes nixt adjacent, and to wage ſhouldiers, upon the King's charges. One of THE KING'S Ships, and four pinnages, were ſent by Sea, with cannon, muſket, powder, bullet, picke, and corſlet. The *Counſell* gave their directione, upon the thrid of Auguſt. About the middeſt of September, their forces drawing near to others,³ *Coline Campbell of Kilberrie*, and ſome with him, were ſurpriſed and taken be *Coll Mackgileſpicke* and his followers. *Mr Donald Campbell*, that Gentleman of the *Houſe of Caddell*, accompanied with fix or ſeven hundreth men, went out of *Argiles Campe*, and ſurpriſed, in a ſuddane, *Col Mackgileſpick* and his companie ; killed ſome, tooke others, and hanged ſome. *Col* him ſelf and the moſt part hardlie eſcaped. *Sir James*, and ſo many as might flie with him,

¹ See Vol. III. p. 1.

² Advocates' Library.

³ Each other.

fled out of *Kintire* to I.L.A. All his followers could not flee, because *Mr Donald Campbell* had ceased (*seized*) upon many of the boats. *Argile*, finding it dangerous to remain long in the fields, winter drawing one, for it now was mid-October, and his company dissolving, practised with *Mackgilespicke*. Col rendered THE CASTLE OF DUNNIVEGE, *Coline Campbell of Kilberrie*, and himself to the Earle.

A number of ORIGINAL PAPERS are appended to this Trial, which, in addition to those already furnished, afford ample and suitable illustrations of this remarkable passage of History. But for *Mr Gregory's* work, the Editor would have deemed it his duty to have made still further researches. To that gentleman's History, reference is made for the minuter particulars attending that subject, and, in general, for all other topics connected with the Feuds and Insurrections which took place in the Isles and West-Highlands.]

Jul. 3.—ANGUS OIG M^cDONALD,¹ Allaister M^callaister, Angus M^callaister, Allaister M^carliche, Johnne M^ccondochie, Johnne Gair M^cmoylane.

Dilaitit of the tressonable taking, keiping, and detening of his Maiesteis Castell of Donyvage, in Yla, and resisting of the Laird of Caddell, his hienes Leutenent and Commiffioner, &c.; as in THE DITTAY following:—FORSAMEKILI. AS, thay, accompaneit with *Coill M^cgillespick* and vperis, pair complices, all rebellis and brokin men,² to the number of ffyftie perfones or pairby, in the moneth of November last, maist tressonabillie convocat thame selfis in airmes, come forwardis in oppin and arrayit battell to his Maiesteis Castell and strenth of Dynnievaig, in Yla; and pair, be craft and policie, tuik in the said Castell, whilk thay stufit³ and furneiffit with muscattis, hagbuttis, poulder, leid, and vper weirlyk furnitour,⁴ for halding pairof: Quhilkis tressonable practizes, sa interpryfet be thame and thair complices, being maid knawin to the Lordis of his Maiesteis Secreit Counsell; and thay, for redres of the saidis rebellis enormiteis, haifing directit the Laird of Caddell,⁵ with companeis of wageit men of weir, as Leutenent to his Maiestie, with ane Herauld,⁶ and trumpettar, to charge thame, in his hienes name and autoritie, to rander the said Castell, and to recover the samyn fyrrth of pair handis. LYK AS, the said Leutenent with his forces, togidder with the said Herauld and trumpeter, haifing cum to the said cuntrie of Ilay, to the effect foirfaid, the foirnamet perfones, with pair rebellious affociattis, vnderftanding pairof, directit furth ane grit number of pair rebellious cumpany aganis the said Herauld and trumpeter, and maist tressonabillie stayit and interruptit thame fra cuming forwardis to þe said Castell, for geving of the said charge; quhairthrow, for feir of pair lyfes, thay durst nocht cum forwardis to the said hous: Lyk as, eftir his Maiesteis Leutenent had plantit him self with his forces round about the said Castell, and had salutet the saidis rebellis,

¹ See May 13, 1609, &c., and Note to the Introduction to *Sir James Makcneill's* Trial, Vol. III. p. 1, &c.—and Vol. I. p. 224, where the Trial of *Angus Makcneill*, his father, occurs. ² Outlaws, and men attached to no particular Clan, who, for pay and the hope of plunder, would join in any enterprise. ³ Provisioned. ⁴ Furnishing; provision. ⁵ Campbell of Calder, or Caddell.

⁶ Robert Wynrahame, Albany (Ylay) Herauld.

being pairin, with nyne fcoir fchottis of ordinance, fchote be thame pairat, the faidis perfones on pannell, nochtwithstanding of þe faid Affault maid be þe faid Lieutennent to þe faid Caſtell, maiſt treſſonablie held out, keipit and detenit þe ſamyn aganis him, he being cled with his Maieſteis authoritie, as Leutennent and Commiſſioner, for releifing pairof; and treſſonabillie fchote furth agane, out of þe faid Caſtell, at þe faid Leutennent and his companie dyuerſe fchottis of muſcattis, and pairwith flew *Capitane Craufurd*, with foure vther of his Maieſteis faithfull ſervandis and ſubiectis, quha war in ſervice with the faid Leutennent, in the executioun of his Commiſſioun. AND the faidis perfones on pannell, and ilk ane of thame, ar airt and pairt of the faidis treſſonable crymes.

My Lord Aduocat producet the Dittay, with the roll of the Affyſe; and defyret proces.

ASSISA.

Mr Rannald Bayne, burges of Ed^r, Hucheoun Fraſer of Kilboig, James Sprewle of Cowden, Andro Meldrum of Dumbrek, Williame Cunningheam of Dolphingtoun.¹

The Aduocat, for verificatioun of the Dittay, producet the pannellis Depoſitiones, and takis instrumentis vpone the production thair of, &c. And proteſtis for Wilfull Errour, gif thay acquit.

VERDICT. The Affyſe, all in ane voce, be the mouthe of the faid James Sprewle, chancellor, ſſand, pronuncet, and declairit the faidis perfones on pannell, and ilk ane of thame, conforme to thair awin Depoſitionis, and approbatioun thair of in judgement, to be ffylet, culpable, and convict of airt and pairt of the haill treſſonable crymes contenit in the Dittay.—SENTENCE. To be tane to the Mercat-croce of Ed^r, and thair to be hangit vpone ane gibbet, quhill thay be deid: And all thair moveable guidis to be eſcheit and inbrocht: And all thair landis, heritages, and annuelrentis pertening to thame, to be fforfaltit to his Maieſteis uſe, &c.

APPENDIX OF DOCUMENTS,

ILLUSTRATIVE OF THE TRIAL OF ANGUS OIG M^cDONALD, &c.

I. OFFERIS *to be preſentit to our maiſt gracious ſouerane and his hienes honorabill Counſall, in the name of Angus M^cDonald of Dwnavaig, his freindis and followeris.*

FIRST, with all humelite, I adheir to my former OFFERIS, maid and ſubſcryuit with my hand, in preſens of THE COUNSALL, at *Glaſco*, in the yeir of God I^m.Vj^c. and fyf yeir, and delyuerit to my Lord of *Skone* to haif bene ſchawin to HIS MAIESTIE; promeſing to performe euery heid of the ſamin.

Secondlie, I offer my ſelf to abyid the tryell of the lawis of this HIS MA^{TES} realme, twiching my obediens to his hienes and *Counſallis* derrectiones, in all poyntis; and keeping of all dewateis appertenyng to a loyall ſubiect, ewir ſen HIS M^{TE} paſt to mak reſidens within his hienes kingdom of ENGLAND.

¹ The remainder 'burgesses of Ed^r.'

Thridlie, feing I haif compleitlie payit all bygane males¹ of his hienes propper landis, within IYLA and KYNTYIR, pofeffit be me, heirtofoir, and hes obtenit HIS MAT^{ES} *Comtrollerris* difcharge thair of, I offir, in lyk manir, in all tym cuming, during my lyftym, to mak thankfull payment of the full Rentall of the faidis landis, wnto the quhilkis I and my foirbeiris hes bene kyndlie tenentis;² and that termelé and yerlé,³ wnder the pane of tynfall⁴ of all kyndis of rycht, tytill, or poffeffioun that I can cleame to ony landis within ony pairt of HIS MAT^{ES} dominionis; his hienes refpecting for the prefent *the Wafte landis of IYLA*, quhill thai be pleneifchit and manwrit.⁵

Ferdlé, I offir fufficient cautioune, within *the Law-landis*, that I falbe obedient to the lawes of this HIS MAT^{ES} cuntré of SCOTLAND; and to that effect, fall compeir befor *the Counfall* of the faid realme, vpone lauchfull premonitione, quhairfoewir the famin fall fit.

Fyftlé, I offir to concur with thais quhomvnto it fall feme guid to (his) hines to gif Commiffiounne, with my haill freindis and followaris, and to fet fordwart and afift fic reformatiounne of the barbarité of thir cuntreis of THE WAST and NORTH IYLES of this HIS MAT^{ES} kingdome of SCOTLAND, as it fall pleas his hienes beft to dewyfe, be thir prefentis, fubfcryvith with my hand, AT KILNACHTANE, IN IYLA, the aucht of September, 1606. ANGUS M^CDONALL of Dwnevaig.

II. LETTER, *Angus M^cdonall of Dwnwaig* to THE KING. Sep. 10, 1606.

PLEIS 3OUR EXCELLENT MAT^{IE},

IT is knawin to 3our MAT^{ES} honorabill *Counfaile*, within 3our hienes realme of *North Britane*, quhat hes bene my behaviour evir fen 3our hienes paft out of thir the North pairtis of 3our MAT^{ES} dominion; how many futtis, and how mony offeris of all dewiteis that it become a loyall fubiect to his dred fouerane, I haif maid to pair Lo.; and how that, efter I haid fullilie fatisfeit and compleitlie payit all byrun maillis addebtit be me to 3our MAT^{ES} *Comptroller*, I obtenit his difcharge pairupoun. I fend with his lo. to haif bene prefentit to 3our MAT^{IE} certane fpeciall OFFERIS, fubfcryuit with my hand, befor 3our hienes COUNSALE in *Glefwg*, in the moneth of Junij, 1605, of the quhilk I haif as zit receavit na anfuer nor⁶ quhat 3our MAT^{IE} refoluis and drectis me to do; and being refusit of Licence to haif cum and prefentit my felf perfonalie befor 3our hienes, to haif maid my awin fupplication out of my awin mowth, I am enforceit to mak the famyn be a mediat perfone, *my Lord Bifchop of the Iyles*,⁷ quhome-by I haif gewin credeit to offer, in my name, to 3our MAT^{IE} my lyfe and all pat I may command, to be vfit as it fall pleife 3our hienes direct; beseiking 3our MAT^{IE}, for the caufe of God, to refpect my aige and pur eftait, and to lat me knaw 3our hienes awin mynd, fignet with 3our MAT^{ES} awin hand; and gif it mycht pleife 3our MAT^{IE} to continew me the poffeffioun of thais kyndlie rowmes,⁸ quhilkis my forbearis⁹ and I hes haid of 3our MAT^{IE} and 3our hienes royall progenitouris, I fall nocht onlie paye the dewiteis and maillis vfit and wount pairfoir, bot alfo fall find fufficient fouertie for obedience to 3our MAT^{ES} lawis, in all poyntis, and in all tyme cuming; or vpirwayis, that it mycht feim guid to 3our MAT^{IE} to let me kend,¹⁰ how and quhairupoun I fall leive; for it falbe knawin, I fall feik na vther refuge bot onlie 3our MAT^{ES} clemencie, nor na vther leiving bot that quhilk of 3our MAT^{ES} princelie liberalitie it fall pleis 3our hines beftow vpoun me; as at mair lenth the beirar will informe 3our MAT^{IE}. And fua, I beseik God to blifs 3our hienes with a long and prosperous ring.

3our Mat^{ies} maift humbill and obedient fubiect,

IYLA YE, the tent of September, 1606.

ANGUS M^CDONALL of Dwnwaig.

¹ *Maills*, rents, feu-duties, &c. ² Feudal Tenants, termed *kindly*, from the circumstance of their being *natives*, born on those lands which had been possessed by their ancestors for many generations. Such persons were seldom ejected, so long as they paid the almost nominal rents of those lands, which they were thus permitted to occupy by a sort of hereditary title, after the decease of the former tenant. They were styled *Nativi* in old Charters. ³ Termly and yearly. ⁴ Loss; forfeiture. ⁵ Stocked and manured. ⁶ Than. ⁷ ANDREW KNOX, of the family of Ramfurly, who had been Minister of Lochwinnoch and Paisley, was appointed Bishop of the Isles, Apr. 2, 1606, having been the first Protestant Bishop of that See. Reference may be made to the Trial of Sir James Mackoneill, *Appendix*. ⁸ Possessions held by him as '*kyndlie Tenant*.' ⁹ Ancestors. ¹⁰ Know; understand.

III. LETTER, *the Privy Council to THE KING.* May 27, 1608.

MOST SACRED SOUERANE,

THIS beirar, *the Bischope of the Ilis*, haueing the occasioun to repair to your Maieftie for some materis concerning the seruice in THE ILIS, We haif committit vnto him the relatioun vnto your sacred MAIESTIE how far we haue procedit in that busynes, and what course is tane for the furtherance and prosequotion of that seruice, vnto whose sufficiencie remitting all thingis, We pray God to grant vnto your Maieftie, efter a long and happy reigne, eternall felicitie. FROM your Maiesteis burghes of EDINBURGHE, the 27 of May, 1608.

Your Maiesteis most humble and obedient subiectis and seruitouris,

AL. CANCELL^s. ABERCORNE. J. BALMERINO^t. D. SCONE.

BEWLY. HALYRUDHOUS. JO. PRESTOUN.

To THE KINGIS most excellent MA^{TIE}.IV. LETTER, *Lord Wchiltrie to THE KING.* May 27, 1608.

MOST SACRED AND GRATIOUS SOUERAN,

I RESSAVID your MA^{TEIS} Lettir, with *Alister Ogis* Remiffiounne, and salbe cairfull to gif vnto your MA^{TIE} full contentment and satisfaciounne in everie particular of the Letter. I haif reteinit the Remiffiounne in my handis, quhill I haiff ane certaintie of *Alisteris* conformitie; quhairin I expect to find him anfuerable, in some meafour, to that great favour quhilk it hes plefit your MA^{TIE} to bestow wpone him. In all wtheris your MA^{TEIS} directionis, quhairin it fall pleis your sacred MA^{TIE} to burdene me, I fall haif ane speciall cair and regard to approve my selff worthie of that trust quhilk your hienes repofis in me; having na wthir thing zit to acquyt your heines inestimable favouris, bot ane hart disposit, in all sinceritie, to discharge that dewtie quhilk your MA^{TIE} expectis, and quhilk to my awin credit appertenis, and to sacrifice my lyffe and all that I haiff, in the executiounne of all your MA^{TEIS} royall directionis. And sua, recommending your sacred MA^{TIE}, with your royall progenie, to the protectionne of God, I rest

30^r Maties moift humbill and obedient seruitour,

EDINBURGH, the xxvij of Maij, 1608.

AL. WCHELTRIE.

To THE KYNGIS moift excellent MA^{TIE}.

V. 'COPY of THE LIEUTENNENTIS LETTER to the Counsell, to be send to Courte with Sir Alexander Hayis Letter, &c.' Aug. 18, 1608.

PLEIS your LORDSHIPIS,

I CAUSIT wey oure ankeris and depairtit from YLA the 14 of this instant, at efter none, and arryved at *Dowart*, in MULE, the 15 of the same monethe; and that with gryte difficultie, in respect of the greatest tempest of wedder and contrarie tyddis, quhairby we wer put in great dangeir all pat nycht; quhairthrow I sailit downe ane of the mastis of my awne schippe. Att oure out-comeing from YLA, we mett *the Inglishe gallay*, with ane vther shipp, that caryis the munitioun and ordinance, the quhilk gallay, yf it haid not pleafit God to haif givin hir that luke¹ to anker in *the Sound of YLA*, sho could not haif eschaipit saiff, in respect of the gryte tyddis heir, and hid gait to pas throw, the quhilk sho appeiris to be verie vnmeit: And finding hir nawise sufficientlie furneist with victuall, to remane heir to await on this service, yf it war bot for the space of aucht dayis; and not being certane of ony victuallis to come heir to furneish hir, bot onlie, at my speciall requeist, *Sir Williame St Johnne*, HIS MAIESTEIS *Admirall* heir, hes tane vpoun him, out of his awne furnitour,² to supplie hir with viveris, quhill bak adverteisment come from your ll.; and seing we have no service in thir *Ylandis* that sho is meit for, and knowing hir to be gryte expenssis to HIS M^{TIE}, vpoun the avisement with *the Admirall*

¹ Luck; good fortune.² Provision.

and remanent *Capitanes* of THE INGLISHE FLEITT, and especialie with him wha is present *Governour* of hir, wha be painfull experience knawis, and hes declairit to ws, how difficile it is to keepe hir faiff, vncaffin away, lett bee to do ony good office with hir, I haif thocht good to crave your ll. aduise, quhidder sho falbe direct bak agane to ENGLAND, with all expedition, as we think all expedient—or yf sho fall be continewit heir—and to what vse, and how sho falbe furneift—for we know not. As to the ship caryare of the batterie and instrumentis appertening thairto, albeit we think not meit to keepe the ship heir, bot remit hir bak with the gallay, for hir better preservation, yit, for fundrie cauffis tending to the forder and finall ending of this service, we think it expedient to keep the munition with the instrumentis, the quhilk I fall fie to be put in sic furitie, as I falbe answerable to HIS MA^{TE} and your ll.

Thir thingis I haif thocht good to commvnicat vnto your ll., imparting vnto your ll. oure opinioun heir, and craving your ll. forder resolutioun in the premisses, quhilk I think, God willing, to follow furth. Vpoun the 16 of this instant, I directit Commiffionaris to the *House of Dowart*, quhairin McCLAYNE haueing his residence for the tyme, promesit to delyuer the House; the quhilk he did vpoun the 17 of this instant. I reffaveing the same, hes furneift with men and viveris that House to be keipit during HIS MA^{TE} and your ll. pleasour. I haif proclamit Courte to be haldin, the xxij of this instant, in *Arrofe of MULL*, when I think, be Godis grace, to tak ordour with pat Yland, in executioun of pat pairt of my Commiffioun, in distroying of lumfaddis,¹ birlingis,² and Hieland gallayis.

I find this ane gryte difficultye, that in respect of the great number of theis vashellis, quhilkis ar intertenyt vpoun the mayne-schoir, quhilkis ar so offensive to the *Yllismen*, that onles thay keepe the lyk counter with pame, thay can not eschaip thair oppreffioun, nather can I iustlie spoilzie pame pairof, vnles the lyk ordour be tane with these that ar vpoun the mayne-schoir, opposith to THE NORTH and WEST YLLIS; and thairfoir, yf it wald pleis your ll. to gif me lyk pouer and Commiffioun, for the aboleifhing of sic vashellis vpoun the mayne-schoir, as I haue with in THE YLLIS, I fall do accordinglie with boith. The quhilk Commiffioun I expect, with diligence; into the quhilk Commiffioun, I wald defyre your ll. to include the intaking and assedgeing and dimoleifheing of all sic Houffis vpoun the mayne-schoir, apperteneing to ony Yllisman, or that may be ayd or reffett to ony fugitiue rebell out of THE YLLES.

I will not trouble your ll. with farder Letteris quhill mair occasioun be offerit; bot, requeisting your ll. to haift bak anfuer, becaus I can not depairt out of this Yll, withoute reffett of the same, I rest,

Be your ll. alwise to be commandit,

DOWART, in Mull, 18 Augst, 1608.

A. VCHILTRIE.

VI. LETTER, the Privy Council to THE KING. Oct. 6, 1608.

MOST SACRED SOUERAYNE,

THIS Nobleman, the Lord Vchiltre, whome it pleasit your heynes to prefer to the charge of Leutenandrie of THE YLLIS of this your Maiesteis kingdome, hes, with verie greate cair, pane, and travellis, and with greate hafaird of his persone, broght that seruice to ane goode perfectioun, by the entrie and exhibitoun befoir ws of a noumer of the principallis and Chiftanes of THE YLLES; and by his awne promiseis and Band, to mak some otheris of thame, whome he hes not presentit, anfuerable and obedyent; as mair particularlie he will informe your sacred MA^{TE}. And sua, recommending him to your Maiesteis gracious regaird and consideratioun, We pray God to blisse your sacred Maiestie with all happynes, and restis for evir,

Your Maiesteis most humble and obedyent subiectis and feruitouris,

AL. CANCELL^S. ARGYLL. CRAFORD. BUKCLUGHE. ABERCORNE. BLANTYRE.

EDINBURGH, 6 October, 1608.

TO THE KINGIS most excellent MAIESTIE.

¹ Lymphads.

² A *birlin* is a small sort of vessel, peculiar to the Western Islands of Scotland.

VII. LETTER, *the Privy Council to THE KING.* Oct. 13, 1608.

MOST SACRED SOUERANE,

THE beirar, *the Bischop of the Yllis*, having the occasioun to repair towardis your sacred MAIESTIE, we haif thought mēt to accompany him with this our testimonie and approbatioun of his dewtiful cariage and behaviour in your MAIESTEIS seruice, in THE YLLIS, wherin he hes caryed him selff with verie goode credite and reputatioun; and is able, be his counfall and advyse, (in respect of his awne credite and freindshippe amang the Yllismen,) to do vnto your MAIESTIE goode seruice thair. And sua, recommending him vnto your sacred MAIESTIE, and most huimelie beseiking your heynes to heir him, in suche thingis as he will propone, anent the prosequitioun of this seruice, We pray God to blisse your sacred Maieftie with all happynes and felicitie, and restis for ever,

Your Maieftis most humble and obedyent subiectis and seruitouris,

AL. CANCELL^s. ROSS. TORPHECHIN. BUKCLUGHE. HALYRUDHOUS.CL^s. REG^{RI}. A. ELPHINSTON. S. T. HAMILTON. JO. PRESTOUN.

EDINBURGH, 13 October, 1608.

TO THE KINGIS most excellent MAIESTIE.

VIII. THE COPIE ANGUS OGE's *first* LETTER to Sir Oliver Lambert. (No date.)

MY HONORABILL GOOD LORD,

I HAVE receavet your Letter, and hes vnderstand be your meaning, that ze wuld have me to rander this Hous to yow into THE KYNGS name. My Lord, as to that, if I had not receavit ane better Warrant frome *my Lord Chancler and Counsell of Scotland* to rander thame this HOUS OF DUNY-WEGE, I wald obey your lo. or any wper subiect, hawing his MAIESTEIS Warrant. My lord, if ze doubt of this, send me your awin Secretar, or anie wper pat can reid, and I shall let him sie my Warrant frome *the Counsell*, desyring me to keip this *Castell*, wnto the tyme that his MAT^{IE} wilbe¹ declairit to me. The quhilk my Warrant fall testefie. And if yow will trouble me, efter I have obeyit his highnes will, be yow assurit that I fall complayne to his MAT^{IE}S *Counsell*. Not troubling your lo. any forder, comitts yow to God. FROME DUNYWEGE, the 14 of this instant month. And if ze will send any of your awin men, ze fall have frie passage to pas and repas to and fro.

Your friend, to your deserwing,

ANGUS OG MACDONALL.

IX. EXTRACT *from* MINUTES of Privy Council Proceedings. Apr. 1614.

THE HOUSE OF DVNYVEG, in YLA, being possessed and kepted be THE BISCHOP OF THE YLES his brother, and two or three fervandes, the same Houfe hes bene of late surprysed and tane be one *Ronnald Oig*, alegeand to be Bastard sone to vmq^{le} *Angus M^cconeill of Dvnyveg*, whom the said *Angus* did neuer, in his tyme, acknowlege to be his sone. This *Ronnald*, being a vagabound fellow, without any certane residence, come latelie to YLA, and finding the Houfe to be but slenderlie kepted, resolved to surpryse and tak the same: And for this effect, he and his complices, being four or fyue in number, retered thame selues to ane wood, neare by the Houfe, whair thay made some laderes, and with thame, one day, airlie in the morning, thay clam the vtter wall, kepted thame selues obscure whill the yettes were opined; and then they took the Houfe, and put *the Bishopes* folkes oute thereof. The reporte whereof comeing to young *Angus M^cconeill*, lafull brother to *Sir James*, who wes within sex myles of the Houfe for the tyme, he immediatlie, according to the cuntrie fasshioun, send the Fyrecrofe² athorte the countrey, warning all the countrey people, who wer affected to HIS MAIESTEIS obedience, to ryse, and concur with him in the recouerie of the Houfe. And so he, with such assist-
ance as come to him, inclosed the Houfe. Thay within held good for sex dayes, being weel prouyded

¹ Probably this should be read, "wnto the tyme that his MAT^{IES} will salbe."
Lady of the Lake, and other works of Sir Walter Scott, for illustrations of this remarkable custom.

² The Fiery Cross. See the

with pulder, lunt,¹ and bullett, whereof thay fand good flore in the Housfe; and thay wer prodigall enough in bestowing the same vpon the beseagares; bot in end, perceauing that thay war not able to keepe the Housfe, thay in the night eshued² at a bak yett, in a litle boat with sex oares, which lay at the Castell; and took with them such goodes as thay fand in the Housfe.

Angus followed thame, bot what farder has fallen oute, is not as yitt come to *the Counselles* knowledge. *Sir James Mcconeill* is *the Counselles* informar of all this busynes; and as he sayes his brother hes offered to delyuer the Housfe bak againe to *the Bishopes* seruandes, who refused to refflaue the same. *The Counsell* haueing hard at lenth *Sir James* discourse, made in this earand, and looking shortlie to heere from *the Erle of Ergyle*, or els frome *the Bishope*, the constant and certane truthe of all this mater, thay haue referued all deliberation hearin, till thay heere from *the Bishope* or *Erle*.

X. SIR JAMES MCDONALD HIS OFFERIS.

FIRST, I offer, if it might please HIS MATIE of his clemencie to give me ILAY, I would pay eight thowfand merkis yearlie thairfoir; and find sufficient cautoun of Lordis and Barrounes for good payment and obedience, be my selfe, and all THE CLANNIS that shall dwell there: And craves but a sevin yeare Tak, to try me.

Secondlie, I offir, if HIS MATIE please to hold ILAY in his awin hand, to mak it worth Ten Thowfand merkis yearlie to HIS MATIE; and to transport my selfe, my brethir, and my kin to IRELAND, or to whatsumewir other place HIS MATIE will appoynt ws; and his highnes to give ws one yearis duetie or rent of ILAY, to by land with; and in the mein tyme, I shall go with *the Bishop* of THE ILES, and shall, God willing, ather get the Housfe and his pledgis, without any chairgis to HIS MATIE, or than returne heir to mynd my owne waird, within fourtie dayis. Provyding, if I get this done, I haue assurance of HIS MATIE and COUNSALL, that my self and my brothir shall get leave to go, presentlie thereafter, with my lord *Bishop* to Courte, and get a kifs of HIS MATIE hand; and my cautionaris shall remaine bound for me, that I and my brother shall returne bak heir to HIS MATIES COUNSALL, to abyid such order as it shall pleas his highnes to injoyne to ws. And I shall leive my sone heir, as pledge for my performance in all, and for satisfioun to HIS MATIE and COUNSALL. I shall bring *Rannald Mcallaster*, who first took the Housfe, and *Ronnald McDonald Vallich*, to suffer for their fault; and *Coll McGillaspie* to be kept in Irnes, during HIS MATIES pleasour. My cautioneris falbe *the Erle of Tullibairne*, *Lord Burlie*, *Sir Ronnald McSorle*, *Johnne Campbell of Cadell*, *Malcum Toshe*,³ and *the Laird of Grant*; every one for Fyve Thowfand merkis—and my sone to die if I faill.

And last, I offer, without any condition of land or money, that if it please HIS MATIE to give me libertie, vpon such suretie by cautioneris as I am able to performe, or pledgis, I shall transport my self and my brothir and kin out of all HIS MATIES dominiounes, having HIS MATIES Letter of Recommendation to THE ESTAITTIS OF HOLLAND; and libertie to tak vp men, if we be imployit; with HIS MATIES frie pardoun for all byganis.

Fire-raising—Theft—Reset of Theft.

Jul. 14.—JOHNNE MALLASTER M'JAMES, in Daill of Rothiemurchus;
Andro M'allaster M'James, in Kynveachie; Johnne Dow
M'kay, in Duchill.

Dilaitit of airt and pairt of the treffonable Raifeing of ffyre, Burneing and destruction of the Houffis and bigingis pertening to vmq^{le} George Dunbar in

¹ Match.

² Escaped; eschewed.

³ Probably meaning *the Laird of MacIntosh*.

Clwne; and thiftious Steilling and away-taking of the haill infycht and pleneiffing, guidis and geir, being within the faidis Houffis, to the avall of ane thowfeand merkis; at the leift, of the thiftious Refetting of the faidis guidis and vtheris contenit in the Letteris direct thairupone, eftir the thiftious fteilling thairof be Daud M^cWilliam and his complices; committit in October, 1598 zeiris.

PERSEWAR, Mr Robert Dumbar, fone to the faid vmq^{le} George Dumbar.

The Justice, with advyse of my lord Aduocat, continewis this matter to the thrid day of the next Justice-air of the fchereffdome of Innernes, quhairin thay duell, or foner, vpone xv dayis wairning, to vnderly the law for the crymes aboue fpecifeit: And ordanis caution to be ffund for the defenderis compeirance to that effect; vnder the panes contenit in the Actis of Parliament.

Johnne Roife of Glenbeg, as cautioner for the entrie of the perfones on pannell, tuik instrumentis of thair entrie; and proteftis he may be fred of his cautionrie. Gregour Grant of Gartmoir become fouirtie, that thai and ilk ane of thame fall compeir, &c.

[*Sir Willame Heart, Justice-Depute.*

ASSESSOURIS to the Justice, in this cause,—MY LORD ARCHEBISHOP OF ST ANDROIS; SIR GEDIONE MURRAY, Thesaurar-depute; MY LORD CLERK OF REGISTER, (Sir Alexander Hay of Whitburgh); MY LORD OF KILSYTHE.]

Treasonable Resetting of Jesuits and Trafficking Papists, &c.

[AFTER the details which have already been given in the Case of OGILVIE,¹ it seems unnecessary to occupy farther space in attempting to elucidate the present Trial. It must, however, be interesting to the reader that there should be preserved, in this place, some remarks made by *Calderwood*, in his larger MS. History,² which strongly depict the popular feeling, in relation to these State prosecutions against the Jesuits.

‘William Sinclair, Robert Wilkie, (and) Cruikshanks were convicted, upon the fourteen of August, for Resetting *the Jesuits* above named, and hearing of Masse. The day following, betwix four and five afternoone, they were brought furth, with their hands bound, to the Scaffold, sett up beside the Crosse, and a gallows in it, according to the custome of Executione. While a great multitude of the people was gazing to see the Executione, there was a Warrant presented to the Magistrates of Edinburgh, to stay the Execution; soe they were carried back again to their wairds. The people thought this forme of dealing rather mockery then punishment!’]

Jul. 14.—WILLIAME SINCLAIR, agent in Edinburgh; Robert Wilkie, browdinster³ in the Cannogait; and Robert Cruikshank, staibler in Ed^r.

Dilaitit of the tressonable Resetting of Mr James Moffett, Mr Johnne Ogilvie, and Mr Johnne Campbell, Jesuites and Traffiqueing Papistis, within thair duelling houffis, dyuerse dayis and nychtis, in the monethis of August, September, and October lastbypast, &c. viz.

DITTAY against the Pannel.

FORSAMEKILL AS our most gracious and sacred Souerane lord, furth of pat godlie zeill ever borne

¹ See his Trial, Vol. III., p. 330, &c.

² Church Hist. MS., Adv. Library.

³ Embroiderer, a lucrative employment in those times; not *browster*, or brewer.

be his Maiestie to pe maintenance of the trew RELIGIOUN, presentlie (to the honour and praise of Almychtie God) professit and establischet within this Kingdome, and for the ruteing out of all Papistiecall and Idolatrus Religioun, with the blinded professouris pairof, furth of the samyn; be mony godlie lawis and Actis of Parliament, deulie maid and publeift, alsweill in his hienes minoritie, as since his acceptatioun of the governament in his awin persone, hes nocht onlie expresselie statute and ordanit, that na professit JESUITE, SEMINARIE PREISTIS, nor TRAFFIQUEING PAPISTIS (being all suorne ennemeis to his sacred Maiesties croun and estait) be fund within this his hienes realme, or ony part of the samyn, vnder dyuerse capitall panes mentionat pairintill; bot lykwayis, be dyuerse vtheris guid and godlie Lawis, Actis, and constitutiones of Parliament, speciallie, be the 120 Act of his hienes tuelf Parliament, haldin at Ed^r vpon the fyft day of Junij, 1592 zeiris, his Maiestie and Estaitis than convenit, hes, be vertew of the said Act, decernit and declairit, that in tyme paireftir following, the RESSETTING of the saidis JESUITIS, SEMINARIE PREISTIS, and TRAFFIQUEING PAPISTIS, aganis the Kingis Maiestie and Religioun, presentlie professit within this realme, is and fall be ane just caus to infer the cryme and payne of TRESSONE aganis the said receptoris:¹ As the said Act of Parliament, ratifeit and approvin in dyuerse his Maiesteis Parliamentis, haldin senfyne, in the selff proportis. AND albeit it be of verritie, that vmq^{le} *Mr Johnne Ogilvie*, alias *Watsone*, *Mr James Moffett*, alias *Halyburtoun*, and *Mr Johnne Campbell*, alias *Sinclair*, all professit JESUITES and MESS-PREISTIS, with dyuerse vtheris of that vnhappy and curfet sect, war directit frome ROME, this last zeir, 1614, be THE POPE and his CARDINALIS, to cum to this cuntrie and vtheris pairtis of his Maiesteis dominiones, to put in executioun, na dout, sum feirfull and tressonabill conclusiounne, as persones maist meit for sic ane dangerous imployment; and haifing, accoirding to pair commissioun, cum to this cuntrie, in the monethis of Junij or Julij, the zeir of God foirsaid; quhair, eftir pair cumming pairto, in all pairtis and companeis quhair thay refoirtit, speciallie, the said *Mr Johnne Ogilvie*, ane vyld and abhominable Tratour, quha iustlie reffaut his deseruet pwneischment, be pair perverse speiches and insolent cariages, maist tressonabillie and oppinlie condampned and disavowit his Maiesteis souerane authoritie, setting vp and manteining, in place pairof, THE POPE OF ROME his vsurpet power for excommunicatting, deposeing, and dethroneing KINGIS, and absolueing subiectis from the othe² of pair naturall allegiance; intending na les, be thais pair tressonabill speiches and informationes, nor³ to haif waknit and steirit vp ane oppin and feirfull REBELLIOUN. THIR pernicious and vnhappy miscreantis, schakin louse be pe authoritie of pair Generallis, to put in executioun sic tressonabill attemptis, nochtwithstanding of his Maiesteis Lawis and Actis of Parliament maid aganis the recepting of thame and vtheris of pair devillische sect, war, in the monethis of Julij, August, September, and October lastbypast, at the leift, in ane or vther of the saidis monethis, maist tressonabillie reffett, harbourit, and interteneit be 3ow, and everie ane of 3ow, viz. the saidis *William Sinclair*, *Robert Wilkie*, and *Robert Cruikshank*, within pair (3our) duelling houffes, in maner as followis; that is to say: THE said *Mr James Moffett*, alias *Halyburtoun*, ane professit JESUITE, a PREIST, and TRAFFIQUEING PAPIST, haifing cum to this burgh of Ed^r, to pervert, be his erroneous doctrine, our souerane lordis subiectis fra pe trew RELIGIOUN presentlie professit, was, for that effect, maist tressonabillie reffett, harbouret, and interteneit be the said *William Sinclair*, in ane or vther of the saidis monethis of Julij, August, September, and October lastbypast, dyuerse dayis and nichtis, within his duelling hous in Ed^r; and all necessar comferte, releif, and intertenement ministrat to him, at all occasiouns, as gif he had bene (ane of) his Maiesteis faithfull and loyall subiectis and professouris of pe trew RELIGIOUN; eftir he was knawin to pe said *William Sinclair* and his wyfe to be of the contrair⁴ RELIGIOUN, be pe informatioun of ane James Colt, he keipit daylie socieatie and companie with pe said JESUITE, vpon the stretis, keipit tryftis and meittingis with him and with the said vmq^{le} *Johnne Ogilvie*, ane notorious Tratour, within the duelling house of *Robert Wilkie*, in the Cannogait, and duelling hous and stable of *Robert Cruikshank*, and within the Abbay

¹ Receivers; reseters.² Oath.³ Than.⁴ Opposite; adverse.

3airdis, and in dyuerse vtheris pairtis of this burgh of Edr and suburbis pairof; committing pairthrow, maist oppin and vnpardonable Treffone, and according to the said Act of Parliament, incurring pairthrow the panes and puneischment exprestit pairintill. LYK AS, the saidis *Mr James Moffett*, *Mr Johnne Campbell*, and *Mr Johnne Ogilvie*, all professit and avowed JESUITES, war, in ane vther of the saidis monethis, treffonabillie reffett, hurdit,¹ keipit close, with thair horffis and provisioun, be the said *Robert Cruikshank*, staibler, within his duelling hous and stable in Edr, be the space of dyuerse dayis and nychtis, war interteneit be him pairintill, and furneist with all maner of conforte, help, and releiff, accoirding to his habilitie, committing pairthrow, oppin and manifest TRESSONE, conforme to the said Act of Parliament. AND siclyk, the saidis *Mr James Moffett* and vmq^{le} *Mr Johnne Ogilvie* war maist treffonabillie reffet, harbouret, and interteneit, in ane or vther of the saidis monethis, be the said *Robert Wilkie*, within his duelling hous in the Cannogait, of certane knowlege that thay war JESUITES, infasar as three feuerall MESSIS² war said be the said *Johnne Ogilvie*, within 3our chalmer, of 3our speciall knowlege; to the quhilkis MESSIS, dyuerse persones maid pair resoirt, and the said Robert keipit the dur, and was quhyles within and quhyles without. BE the wilfull and treffonable Reffetting of the quhilkis JESUITES, SEMINARIE PREISTIS, and TRAFFIQUEING PAPISTIS, professit and avowed enemeis to his Maiesteis persone, Croun, and estait, and trew RELIGIOUN presentlie professit, and that within thair duelling houffis, and vtherwayis, as is aboue declairit, the foirsaidis persones, and ilk ane of thame, accoirding to the tennour of the said Act of Parliament, hes incurret the pane and pwneischment of TRESSONE, viz. to be pwneist and demanit³ as Tratouris, and pair hail landis and guidis fforfalt and escheit to his Maiesteis vse; to the terrour of vtheris to abstene fra the lyk heireftir.

WILLIAME SINCLAIR, eftir reiding of the Dittay, declairit, that it is of treuth that he hes offendit God and the Kingis Maieftie, by Reffetting of *Mr James Moffet*, Jesuite, in the moneth of October last; quhilk he did only vpone simplicitie:⁴ And denyis the Reffet of *Mr Johnne Ogilvie*, or *Mr Johnne Campbell*, Jesuites, at ony tyme: As also, denyis the Reffetting of the said *Mr James Moffet*, in the monethis of July, August, and September, set down in the Dittay. My lord Aduocat acceptis his Confessioun, in that he acknowledges his Reffetting of Moffet, in the moneth of October; and adheris only thairto, aganis Williame Sinclair.

It is allegit be Williame Sinclair, for him selff and remanent persones vpone pannell with him, that the Dittay is nocht relevant, nather can the samyn be put to the knowlege of ane Assyse, except it war speciallie condiscendit thairin, that *Mr James Moffet* said Mefs, and was a traffiker aganis the Kingis Maieftie and the Religioun.—It is anfuerit be my lord Aduocat, the allegiance aucht to be repellit, in respect of the Dittay and Act of Parliament, beirand distinctlie, that nocht only the Reffetteris of the Sayeris of Mefs committis Treffone, bot also the Reffetteris of Jesuites, Seminarie Preistis, and Traffiking Papistes aganis the Kingis Maieftie and Religioun, committis Treffone. And trew it is, that the said *Mr James Moffet* is ane notorious Jesuite, and ane traffiker aganis the Religioun professit within this realme, as is confessit be the said Williame Sinclair

¹ Literally, *hoarded*; concealed with extreme caution, as one would a hoard of money. ² Masses.
³ Used; treated. ⁴ Goodnature; without any treasonable intent.

him felf, in his awin Depofitioun, beirand, that Moffet declairit to him, that he was cum to this cuntrie to venter his lyfe for the faiftie of faules that war in danger; and fa, was fufficientlie knawin to the faid Williame, that he was ane Jefuite and traffikeing Papift aganis his Maieftie and Religioun: Be recepting of the quhilk Jefuite thaireftir, he has fallin vnder the danger of the faid Act of Parliament.

It is forder allegit be the pannell, that he can nocht pas to ane Affyfe for the Recepting of Jefuites, except, conforme to the Act of Parliament, made in anno 1593, cap. 164, he had refset thame, *fcienter et prudenter*, be the fpace of thre nychtis togidder, or thre nychtis at feuerall tymes; be the quhilk Act, it is provydit, that gif it be fa tryit,¹ that the perfone convict for the *first* falt, his efcheit fall fall; ffor the *fecund* falt, fall amit² his Lyfrent; and (ffor) the *thrid* falt, fall incur the crymes of Treffone. And thairfore, except the faid Recept be fa tryit, the Dittay is nocht relevant.—It is anfuerit, that the allegiance aucht to be repellit, in refpec the faid Act of Parliament nawayis derogattis the Act of Parliament quhairupoun the Dittay is foundit: And thairfoir, nochtwithftanding of the faid allegiance, fould pas to ane Affyfe.

It is forder allegit be the pannell, that be the Act of Parliament maid in anno 1600 3eiris, cap. 18, thair can be na forder exactit of the Recepteris of Jefuites, bot ane pecuniall payne; quhilk he is content to pay, accoirding to the Lordis modificatioun: And thairfoir, the Dittay for Treffone can nocht pas to an Affyfe.—It is anfuerit, that the allegiance aucht to be repellit, nochtwithftanding of the faid Act quhairupoun the famyn is foundit, in refpect the famyn nawayis derogatis the Act of Parliament maid be his Maieftie and Eftaittis, in anno 1592, bot ratifies the faid Act in everie poynt.

It is allegit be the pannell, that he can nawayis pas to ane Affyfe for Refsetting of the faidis Jefuites, nather is the Dittay relevant aganis him, in refpect, be ane Act of Parliament maid at Edinburgh, in anno 1609, cap. *quinto*, it is thair planelie explanet and declairit, that all Actis maid ofbefoir aganis the Refletteris of Jefuites, &c. haif full force, and be put to dew executioun aganis the faid Refletteris, fa fone as intimatioun and denunciatioun beis maid of the faidis Jefuites, Seminarie Priestis, and vtheris contenit thairin, at the Mercat-croce of the heid burgh of the fchyre quhair thay duell, and Mercat-croce of Edinburgh;³ bot fa it is, that thair was na intimatioun nor denunciatioun maid at ony Mercat-croce of the faid *Mr James Moffet* his name, befoir his Refsetting within the pannellis hous, to be ather a Jefuite, Seminarie Preift, or of ony vther ordour: And thairfoir, the faid Dittay for his Recept can nocht pas to ane Affyfe.—It is anfuerit be my lord Aduocat, that the explanatioun repeitit be the pan-

¹ If it so turns out upon Trial.

² Lose.

³ As the *commune forum*.

nell, fet down in the said last Act of Parliament, nawayis derogatis or takis away the former Act of Parliament maid aganis the Resfetteris, quhairupoun the Dittay is confaue; bot be the contrair, the said Act is Ratifeit, and ordanit to haif frie strenth, effect, and executioun, accoirding to the tennour thair of; and the explanatioun of the said Act, in anno 1609, is only in fauouris of sic as Resfettis Papiftis ignorantlie, nocht knowing thame to be Papiftes, or of ane contrair Religioun: Bot it was fufficientlie vnderftuid to the pannell, befoir *Moffettis* Resfet, that he was ane Catholik ffather, and was cum to venter his body for the Catholik Faith, as is confeffit be his Depofitioun: And thairfoir, the said allegiance aucht to be repellit, and the pannell pas to ane Affyse.

INTERLOCUTOR of *Relevancy*.

THE JUSTICE, with advyse of the Affeffouris present, Repellis the haill allegiances proponit be the pannell; and ffindis the Dittay relevant: And Ordanis the samyn to be put to the knowlege of ane Affyse.

ASSISA.

Thomas Fischer, mercheand bur-	Robert Halybruntoun, merchand	Dauid Williamefone, elder, mer-
ges of Edinburgh,	thair,	cheand thair,
Eduard Johnestoun of Ryhill,	Johnne Inglis, skynner thair,	Capitane James Hunter, burges
Williame Cocherane, mercheand	Nicoll Vduard, mercheand thair,	thair,
burges of Edinburgh,	Williame Nemok, tailzeour thair,	Alexander Broun, elder, mer-
Dauid Mitchell, merchand thair,	Thomas Weir, peuderer thair,	cheand thair,
Alexander Speir, mercheand thair,	James Weill, mercheand thair,	Jo. Fairlie, younger, burges thair.

My lord Aduocat takis instrumentis of the fuering of the Affyse: And for VERIFICATIOUN of the Dittay, producet the pannellis Depositiones, viz. the said William Sinclairis Depofitioun, all writtin and fubfcryuit with his hand; and the vther tua Depositiones maid in prefens of dyuerse Lordis of his Maieftis Secreit Counsell, confeffing thair particular Resfetting of the Jefuites, in maner fpecifeit in thair Dittay, and thairupoun askit instrumentis; and proteftis for Wilfull Errour, gif thay Acquit.

VERDICT. The Affyse, all in ane voce, be the mouth of Dauid Williamefone elder, chancellor, ffand, pronuncet, and declairit the faidis *Williame Sinclair*, *Robert Wilkie*, and *Robert Cruikshank* to be ffylet, culpable, and convict of the treffonable Resfetting of the faidis Jefuites, in maner fpecifeit in thair Dittay; accoirding to thair awin Depositiones, producet for verificatioun thair of.

SENTENCE. To be tane to the places of thair Executioun, and thair to be execute to the daith, and vtherwayis demanit as Tratouris: And all thair landis, guidis, and geir to be fforfalt and efcheit to his Maiefteis vfe.

Aug. 15.—THE quhilk day, THE JUSTICE being fitand in Judgement, ane WARRANT was producet be him, and ordanit to be red, quhilk was direct to him fra his Maieftie, &c. viz.

JAMES R.

To our truſtie and weilbelouit SIR WILLIAME HEART, kny^t, deputy Juſtice generall, in our kingdome of Scotland. QUHAIR AS, Williame Sinclair, Aduocat, Robert Wilkie, imbroderar, and on Cruikſchank, a ſtaibler, ar convicted and condemned of Treaffone, for the Wilfull Recept and ſupplieing of Moffet the Jeſuite: It is our pleſour, that 3e proceid to the finall pronunceatioun of the Sentence and Executioun of the pwneifchment provydit by our Lawis in the lyk caices againſt thame, with all convenient expeditioun: For doing quhairof, theſe presentis ſhall be 3our ſufficient Warrant. GEVIN at Sarisburrie, the 26th of Julie, 1615.

For obedience of the quhilk WARRANT, the Juſtice ordanit the ſaidis Williame Sinclair, Robert Wilkie, and Robert Cruikſchank, to be broght furth of Waird to the Mercat-croce of Edinburghe; and thair to be Hangit vpone ane gibbet, quhill thay be deid: And all thair landis, heritageis, guidis, geir, and vtheris pertening to thame, to be fforfalt and eſcheit to our ſouerane lordis vſe, &c.

Eftir the pronunceatioun of the quhilk Sentence, the ſamyn was intimat to thame be Johnne M^cNacht, bailzie of Edinburgh, to quhome directioun was gevin be the ſaid Juſtice, for cauſeing put the ſamyn to executioun, conforme to the Warrant aboue ſpecifeit.

Aug. 30.—BEING of new agane brocht furth of Waird, and presentit vpone pannell, be the Bailleis of Edinburghe, as thay quhais dome and executioun thair of, &c. was of our ſouerane lordis meir mercie and grace delayit and ſuperceidit, THE JUSTICE, for obedience of his Maieſteis poſterior WARRANT, direct to my lord Archebiſchope of St Androis, My Lord of Bynning his hienes Secretar, and Sir Gedione Murray his hienes Theſaurer depute, quhairof the tennour followis, pronounced Sentence accoirdingly.

JAMES R.

WHEARAS, We ar crediblie informet, that Williame Sinclair, ane Aduocat before pe Seſſioun, Robert Wilkie, browdinſter, and on Cruikſchank, ane ſtaibler, is convict of Treafone, for Reſſetting of Moffet and Ogilvie the Jeſuite: It is our pleaſour, that Williame Sinclair and Robert Wilkie, be Banifchet our dominiones during our pleſour: And that pe ſaid Cruikſchank be Banifchet the toun of Edinburghe during our pleſour. GEVIN at Sallſberrie, the xxvij day of Julij, 1615.

Quhilk DOME and SENTENCE, the ſaidis perſones, in all humilitie, imbracet and acceptit vpoun thame, &c.

[CURIA Juſticiarie, ſ. d. n. regis tenta in Pretorio ciuitatis Glaſguen. per D. Will. Heeart.]

Treasonable Reſetting of Jeſuits—Hearing of Maſs, &c.

Sept. 5.—SIR JAMES CLEILLAND (KNEILLAND) of Monkland, kny^t, Williame Maxwell of Cowglene,¹ Robert Vrie, wryter, burges of Paiſlay.

Dilaittit of the treſſonable Reſſetting of Mr Johnne Ogilvie, Jeſuite, within thair duelling houffis: And heiring of dyuerſe Meſſis ſaid be him thairintill;

¹ See their Examinations appended to the Trial of *John Ogilvy*, Vol. III., 330.

contrair the Actis of Parliament ; committet in the monethis of July, August, and September, 1614 yeiris ; at the leift, in ane or vther of the faidis monethis.

PERSEWAR, Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord.

PRELOCUTOURIS in defence, The Laird of Keir, the Laird of Muschett, the Laird of Pollok, Johnne Cranftoun, Mr Johnne Halyday, Aduocat, Mr Thomas Pollok, Aduocat.

THE Justice, with advyse of my Lord of St Androis, my lordis Kilfythe, Clerk of Register, and his Maiesteis Aduocat, continewis this matter to the saxt day of December nixt, to be tryit at Edinburghe : And Ordanis the pannell to find Cautioun for thair entrie that day and place, in the hour of caus, vnder the panes following, viz : The faid Sir James Kneilland, vnder the pane of Ten Thowfeand merkis ; the faid Williame Maxwell, vnder the pane of Fyve Thowfeand merkis ; and the faid Robert Vrie, vnder the pane of Fyve Hundreth merkis money.

The perfonas on pannell offeris thame selffis to the Tryell of the Law for the faid cryme, diffassenting to the faid continewatioun ; and thairupoun askit instrumentis : And for obedience of the faid Justice Ordinance, the faid Sir James Kneilland ffand Sir Johnne Home of Huttonehall cautioner for him ; the faid Williame Maxwell ffand Sir Johnne Maxwell of Pollok, kny^t, cautioner for him ; and the faid Robert Vrie ffand Alexander Cocherane of that Ilk, cautioner for him, that thai fall compeir befor the Justice and his Deputis, in the Tolbuth of Edinburghe, the faid saxt day of December nixt, in the hour of caus, and vnderly the Law for the faidis crymes, vnder the feverall panes aboue writtin.

COMPEIRIT Harbert Maxwell, burges of Edinburghe, and producet ane Warrant of the Lordis of Secreit Counsell, anent the deserting of the dyet appointit for tryell this day.

JUSTICE, Justice-clerk, and 3our deputis : 3e fall, vpon the ficht heirof, desert the dyet appointit for Tryell of Sir James Kneilland of Monkland, Williame Maxwell of Cowglen, and Robert Vrie, burges of Paislay, the saxt day of December nixtocum, ffor the Ressetting of vmq^{le} Mr Johnne Ogilvie, Jesuite : Anent the quhilk, thir presentis falbe 3our Warrant. Subfcryuit AT EDⁿ, pe xxij day of November, 1615. SANCTANDROIS. S^r J. MURRAY. ALEX^r HAY. S^r J. OLIPHANT. KILSYTH.

The pannell difassentis to all forder continuatioun ; and protestit, in respect that this is the secund dayet keipit be thame in this matter, first at Glasgou, and now at Edinburgh, that their cautioneris be fred, viz., Sir Johnne Home of Huttonehall for the faid Sir James, and Alex^r Cocherane of that Ilk, for the faid Robert Vrie.

Hearing of Mass, &c.

Sep. 13.—MR JAMES MOFFET, alias HALYBURTOUN, ane Jesuite Preist.

Dilaitit of the Treffonable Hearing of Mafs within this cuntrie, speciallie within the place of Auchindoun, a tuentie yeir fyne or thairby : And for con-

travening the Actis of Parliament in resoirting within this cuntrie, he being ane Jesuite and Seminarie Preift, directit from Rome, to peruert his Maiesteis subiectis from the trew Religioun; and vtheris crymes contenit in his DITTAY.

DITTAY against Mr James Moffet.

[The preamble is similar to those which precede, and founds upon the Act 29th July, 1587. It then states,]

“THAT 3e, being tranet vp at scoles and Colledges within this Kingdom, and haifing accomplisched 3our course in the College of St Androis, quhair 3e was laureat; and haifing paireftir applyit 3our mynd to the studie of Theologie, and dyuerse tymes maid 3our privat exerceiffis within pe New Colledge pairof, 3e, in 3our awin fulishe opinioun, playing the rwnigait¹ frome the trew Religioun, first studeit and professit be 3ow within this Kingdome, adressit 3our self to the place of Auchindoun, quhair 3e, aganis the saidis Actis of Parliament, hard ane Mefs, and was present at pe Celebratioun pairof, the Auld Laird of Auchindoun and Mr James Gordoun being present withe 3ow, at the heiring of pe saymn: LYK AS, 3e, haifing schortlie paireftir past furth of this cuntrie to ROME, in Italie, and haifing pair ressaunt the ordour of a Jesuite Preift, and haifing remanit furth of pis cuntrie be the space of tuentie yeiris togidder, studieing to pe said Roman Religioun, 3e being ane professit Jesuite, expres contrair the tennour of the foirsaid Act of Parliament, and in manifest contempt pairof, and of his Maiesteis royall authoritie, in the moneth of Julij, 1614, retournet to this realme, be directioun of CLAUDIUS AQUAVIVA, 3our Generall, off plane purpois and intentioun to pervert and seduce his Maiesteis subiectis frome the trew Religioun presentlie professit; resoirtit in dyuerse paitis of this cuntrie, speciallie, within the burgh of Edinburghe, Cannongate, and Citie of St Androis, quhair 3e was tane, apprehendit, and brocht to this burgh of Edinburghe, and Tolbuth pairof, quhairin 3e haif bene detenit prissoner, as ane Jesuite Preift, and a perverter of pe Kingis Maiesteis subiectis from the trew Religioun, presentlie professit,” &c.

The pannell, efter reiding of the DITTAY and his accusatioun of the crymes mentionet thairintill, offerit him selff in his Maiesteis Will for the samyn: Quhairupoun my lord Aduocat askit instrumentis.—Thairefter my lord Aduocat producet the WARRAND following:—

JUSTICE, Justice-clerk, and 3our deputis: 3ow fall appoint a Justice Court to be haldin in the Tolbuth of Edr at fuche convenient day as 3ou think goode; and pairin 3ou fall put Mr James Moffet, Preift, to the knowlege of ane Assyse for fuche crymes as fall be gevin in Dittay againes him, be his Maiesteis Aduocat, and proceid and minister Justice vpone him, conforme to pe lawis of this realme; Bot yf the said Mr James fall happin to cum in his Maiesteis will, 3ow fall pronounce his Maiesteis will as followis, to wit: That the said Mr James fall be Banischet his Maiesteis dominiones, and nevir return agane within the samyn, vnder the pane of deid: And that he act him selff, judiciallie, to depairt and pas away betuix and fuche a day as 3ow fall appoint, and nocht to retorne vnder the said payne: And forder, that he find caution actit in the Buiks of Secret Counfall to this same effect, vnder the pane of Thre thousand merkis, to be incurrit be his cautioner, besyde the pane of deid to be execute vpone him selff, in caice he failzie in the premiffes. And this Dome being pronuncet, and he haveing actit him selff, that 3ow send him bak agane to his waird, quhill the said caution be fund, and quhill a schip be in reddines quhairin he may be transpoirtit. Quhairanent pir presentis fall be 3our Warrand. AT EDINBUR^T, the xxij day of August, 1615.

AL. CANCELLS. SANCTANDROIS. SCONE. BINNING. J. PRESTOUN. AL. DRUMMOND.

¹ Runagate; renegado.

SENTENCE was pronounced accordingly. He was adjudged to 'depairt and pas away furth of his Maiesteis dominiones, betuix and the tuentie day of October nixtocum, wind and wedder fervand.'

Slaughter.

Nov. 29.—JAMES KING, sumtyme of Barro; Alexander Lummisdene of Clova; Mr Gilbert Arnould, indueller in Aberdene; and David King in Hoy, in Orkney.

Dilaitit, accuset, and persewit at the instance of Elizabeth Seatoun, only dochter to vmq^{le} Alexander Seatoun, than ffiar of Meldrum, Johnne Vrquhart of Craig-Fintrie, hir spous, for his intereis, Johnne Seatoun now of Meldrum, &c., off airt and pairt of the Slauchter of the said vmq^{le} Alexander Seatoun, with schottis of hagbuttis and muscattis; committit vpone the landis of Barro, in the hie-way betuix Meldrum and the Kirkton of Bourtie, vpone the xxviij day of August, 1590: And siclyk, ffor beiring and schuitting of Hagbuttis, muscattis, and pistolettis, &c.

Mr Robert Fairlie, feruitour to Mr Alex. King, Aduocat, produceit ane War-rand of his Maiestie, daitit at Newmarket, the fixtenth of November, 1615, anent deserting this dyet. The Diet was deserted accordingly.

Letters of Exemption

IN FAVOUR OF THE PROVOST, BAILIES, COUNCIL, AND COMMUNITY OF
The Burgh of Aberdeen.

Dec. 2.—Compeirit personallie Mr Thomas Nicolsone, Aduocat, in name of the Provost, &c. of Abirdene, and producet to my Lord Justice LETTERS OF EXEMPTION, vnder the Previe seill, quhairof the tennour followis.

JAMES, be the grace of God, King of Scottis: To all and findrie our schereffis, stewartis, Justice, Justice Clerkis, Thesaurer, Aduocat, and all vtheris Judges and ministeris of our Lawis, thair deputis and officeris, present and to cum, leigis, and subiectis, quhome it effeiris, to quhais knowlege thir our Letteris fall cum, Grating. Wit 3e ws, vnderstanding that the Provost, bailleis, counsell, and communitie of our burgh of ABERDENE, ar oft tymes atteichet and summondit to pas vpone Inqueistis and Assyfis to our burgh of Ed^r and utheris pairtis outwith pair boundis and Jurisdictiones, in crymes committit far distant fra thame, quhairof thay ar altogidder ignorant; and that thay had ane Exemption to the effect vnderwrittin gevin and grantit to thame be ws, with advyfs of vmq^{le} our rycht trest coufing James Erle of Moirtoun, Lord Dalkeith, &c. Regent to ws our realme and legis for the tyme; as the samym Exemption, of the dait at Aberdene, the thrid day of September, the 3eir of God I^mV^c threscoir fourtene 3eiris, deulie and ordourlie past and admittit in the Justice Court haldin at our said burgh of Aberdene, immediatlie pairefter, be vmq^{le} Sir Johnne Bellenden, our Justice clerk for the tyme, at mair lenth beirs. AS ALSO, confidering, how vpone the occasioun of Commiffiones of Leutenendries and Justiciareis, grantit in faouris of the Noblemen of the cuntrie, or to vtheris, for administratioun of Justice passing vpone our Rebellis, and disorderit perfones for revenge of privat

quarrellis and contraverseis betuix pairtie and pairtie; the saidis Proveist, bailleis, counfall, and communitie ar oft tymes drawin furth of pair awin Toun to vtheris pairtis of the cuntrie, to the grit hazard of pair lyves and wrak of pair guidis; albeit, that accoirding to the libertie of frie Burgh, quhair with thay and pair prediceffouris ar infest and foundit, thay aucht only to attend vpon our selff, being in the ffeildis in proper persone, or with our Leutenent, in defence of our realme aganis forane nationes. AND haifing confideratioun, that our said Burgh of Aberdene lyis within the North pairtis of our realme, far distant fra ws, and of the guid, trew, and thankfull seruice done to ws and our prediceffouris be the Proveist, bailleis, counfall and communitie of our said Burgh, alweill in tyme of weir as of peace; and of pair reddie and deutiefull obedience towardis ws, quhair of we haif daylie prouif and experience, and respecting pair guid mind to continew pairin hereftir: THAIRFOIR, we haif gevin and grantit, and be thir our Letteris gevis and grantis to the Proveist, bailzeis, counfall, communitie, burgesfis, craftismen, and induelleris of our said Burgh of Aberdene, present and to cum, speciall LICENCE to remane and abyde at hame fra all Raidis, Conventionis, Oistis, Assemblis, Airmeis, Gatheringis, Wappon-schawingis or Weiris, to be maid be ony our Justices, be Commiffioun of Leutenendrie, Justiciarie, or vther Commiffioun quhatfumeuir, to be grantit be ws, or meiting of thame in ony pairt within our realme in tyme cuming, except pat either our selff be present in proper persone, or that our Leutenent, accompaneit with the remanent of our realme, be vpon the defence of the cuntrie, aganis forane nationes, or that our selff pas for repressing of Rebellis and Traitouris, aganis our persone within the cuntrie: And fra all compeirance or passing vpon ony Assyffis or Inqueistis, in quhatfumeuir crymes or actiones, (except sic crymes as ar committit within our said burgh, friedome thairof, and tua myles about the samyn,) Exemis¹ and discharges thame and ilk ane of thame pairfra, during all the dayis of pair lyftymes. And willis and grantis pat pay in doing pairof fall incur na payne, skayth, cryme, nor danger in pair perfonas, landis, or guidis, nor be callet nor accuset pairfoir criminallie nor civille, be ony maner of way, in tyme cuming, nochtwithstanding ony our Actis, statutis, ordinances, Letteris, proclamations, or charges quhatfumeuir, speciall or generall, maid or to be maid in the contrair; anent the quhilkis, and all panes contenit pairintill, We haif dispenfit, and be thir our Letteris dispenffis with the Proveist, bailleis, counfall, communitie, burgesfes, craftismen, and induelleris of our said burgh, present and to cum, for euir. DISCHARGEING heirfoir, 3ow, all and findrie our Schereffis, Stewartis, Justices, Justice clerkis, Thesaurer, Aduocat, and all vtheris Judges and ministeris of our lawis, 3our Deputis and officeris, present and to cum, off all calling, accuseing, atteiching, arreisting, summond- ing, wairning, poynding, trubilling, or ony wayis intrometting with the saidis Proveist, bailleis, counfall, communitie, burgesfis, craftismen, and induelleris of our said Burgh, present or to cum, pair landis or guidis, in ony wayis, in tyme cuming, for pair said remaning and abyding at hame fra our saidis Raidis, Airmeis, and vtheris foirsaidis, and fra all and findrie Inquestis and Assyffis, to be committit, as said is; and of 3our offices in pat pairt, be thir our Letteris. GEVIN vnder our Previe Seill, At Dalkeithe, the saxtene day of Maij, the 3eir of God I^m. ffyve hundreth fourfcoir tuelff 3eir, and of our regne the tuentie ffyve 3eir.

PER Signaturam manibus f. d. n. Regis ac Secretarij subscriptam.

[*D. Will. Heart, Justiciarius-deputatus;*

ASSESSORES Justiciario, D. Alex. Drummond de Meidhoip, D. Will. Levingstoun de Kilsythe,
Senatores Collegij Justicie f. d. n. Regis.]

Barbarous Slaughter and Maiming of Sheep—Oppression, &c.

[THE following Case is altogether unparalleled, even in the annals of Border or Highland revenge. On account of its singularity, it has been considered necessary to make some investigation into the

¹ Exempts.

subject, for the information of the curious enquirer. The story is so forcibly told in the proceedings before the Criminal Court, that the Editor shall not weaken its effect by attempting to rehearse the facts in this place. It is enough for the purposes of this Collection, that the reader is informed, that the property of *Howpaslot*, an esate of one of the most ancient branches of the name of *Scott*, having, by some means, come into the temporary possession¹ of *Sir James Douglas of Drumlanrig*, a powerful Border Baron, who had distinguished himself by the activity with which he aided the suppression of the disturbances on the Marches, *the Lady Howpaslot* appears to have been roused into fury at the very idea of the domains of her ancestors coming into the hands of a Douglas. She therefore instantly held a council of war in the *Town of Hawick*, of which *Drumlanrig* was the Superior, in the month of April, 1615, at which she and her friend, *Jean Scott of Satchells*, presided. The bravos and ruffians who figure in this Trial, and of whom every Clan had a few to do their worst work, at once undertook to execute the orders of these infuriated females, and, as will be seen by the subsequent proceedings, they succeeded in effectually preventing *Drumlanrig* from 'plenishing,' or stocking, the farms. These villains greedily engaged to maim and destroy the whole of the sheep which had been brought to the grounds; and this cruel and barbarous act they performed in a manner almost too horrible to be related.

Sir James Douglas did not long survive the perpetration of this atrocious fact, having died Oct. 16, 1615. He was succeeded by his son *Sir William*, who was afterwards created *Viscount of Drumlanrig*, *Lord Douglas* of Hawick and Tibbers, Apr. 1, 1628; and *Earl of Queensberry*, Jun. 13, 1633. *Sir William* actively pursued these heartless ruffians, and was successful in bringing all of them to deserved punishment. In the Appendix to this Trial, the reader will find a characteristic Letter from this Nobleman to his kinsman, *Murray of Lochmaben*, the Original of which the Editor has fortunately discovered in the Advocates' Library.

In an interesting communication from *SIR WALTER SCOTT*, Bart., on the subject of this Trial, with which the Editor has been favoured, some interesting particulars are detailed, regarding THE SCOTTS of the Border. No apology need be made for enriching these pages with the following extract:—

'OUR Name were very clannish. I have, for the time, in my possession, a BAND or ASSOCIATION between *Sir Walter Scott of Branxholm, knight, Laird of Buccleuch*, and about fifty of the most important men of his kin and Clan, [dated 3d June, 1589.] It proceeds upon an Association made to the same purpose by *SIR WALTER SCOTT*, the father of the Chief, and is calculated to secure against any Clansman taking any "room" or possession over the head of another of the Name. Any one who was accused of having done so, bound himself to stand by the award of five men, to be mutually chosen, bearing the Name of Scott. Even if the Chief should encroach upon the possessions of any inferior person of the Name, he declares he will submit the cause, in like manner, to four persons of the Name of Scott; which shows an independence on the part of the Clansmen which I was not prepared for. The BAND is the property of my cousin and relative, *William Scott, Esquire, of Raeburn*. It seems to have been calculated to prevent kinsmen from going to law with each other, and to secure a species of justice within the Clan, to the advancement of the "guid and godlie purposes" of their Chief. The "guid and godlie purpose" of *the Cordiner* and *the Suchler* seems to have been intended for the same reason. *HOWPASLOT* was an old inheritance of *the Scotts*, and, on whatever grounds Douglas possessed it, returned to the Name again. *Douglas*, you are aware, was *Lord of Hawick*, to which *Buccleuch* afterwards succeeded.

'Of the people mentioned in the Trial, I know little. *Satchells* is probably the place of the name, lying on the *Ale* or *Teviot*, now part of *John Corse Scott of Synton's* property. The individual termed

¹ It is by no means unlikely that *Howpaslot* was 'conquest' by means of Wadset, Apprising, or other legal 'Diligence;' for it is certain, that it was but a short period in the occupation of *the Laird of Drumlanrig* or his Tenants. The summary mode by which his 'guidis' were disposed of, may have precipitated his bringing these matters to a close, and his accepting of a pecuniary accommodation.

William Scott, called in Satchells, may have been the father of *Walter Scott of Satchells*, the Historian of the Clan, terming himself,

An old Souldier, and no Scholler,
And one that can write nane,
But juft the letters of his name.'

The singular work here quoted by SIR WALTER SCOTT, a copy of which is in the Editor's Collection, is titled, 'A TRUE HISTORY of feveral honourable FAMILIES of the right honourable NAME OF SCOT in the Shires of Roxburgh and Selkirk, and others adjacent. Gathered out of Ancient Chronicles, Hiftories, and Traditions of our Fathers, by *Capt. Walter Scot*. EDINBURGH, printed by the Heir of *Andrew Anderfon*, Printer to his moft facred *Majesty*, City, and Colledge, 1688.' It was composed by the author at the very advanced age of *Eighty-eight*! He states that he was fifty-seven years in active service, abroad and in Scotland, having entered the army at the age of twenty-nine. Although he boasts of being illiterate, he seems to have had much of the spirit of a staunch Member of the *Roxburghe, Bannatyne, or Maitland Clubs*—for he concludes his extraordinary work with the following '*L'Envoye*.'

'Therefore be gone my Book, stretch forth thy VVings and fly
Amongst the Nobles and Gentility:
Thou'rt not to fell to Scavengers and Clowns,
But given to worthy persons of Renown!
The Number's few I've printed, in regard
My Charges have been great, and I hope Reward;
I cauf'd not print many above twelve-score,
And the Printers are engaged that they fhall print no more!'

The Editor, thinking that the Original CONTRACT or BAND OF ASSOCIATION between the heads of the powerful FAMILIES of the NAMES of KER and SCOTT, will prove most acceptable, as preserving the memory of times so powerfully depicted by *Sir Walter Scott* in many of his works, he has, after examining the ancient Records, procured a transcript, which is also appended to the present Trial. So able an abstract of the renewal of this '*Band*' has been given by *Sir Walter Scott*, that it has not been deemed necessary to apply for liberty to present the reader with a copy of it.]

Feb. 20, 1616.—GEORGE SCOTT, cordiner in Hawik, '*the Souter*,' callit *Mariones Geordie*; Walter Scott, fone to *Braidis Andro*; Ingrem Scott, and Jok Scott, callit *the Suckler*.

Dilaitit of the crewall and barbarus Slauchter of threscoir fcheip, or thairby, pertaining to the Laird of Drumlangrig; committit vpone the Landis of Howpallot, in the moneth of Apryle laft, conform to the Dittay following.

DITTAY against *George, Walter, Ingram, and Jok Scot, alias the Suckler*.

FORSAMEKILL AS, albeit be dyuerse loveabill lawis and Actis of Parliament, it be expreflie provydit, ftatute, and ordanit, that all Slayers of Horffis, oxin, or vther cattell and guidis,¹ fall be eftemit and pwneift as Thevis; as the faidis Lawis and Actis of Parliament in tham felffis proportis: Nochtwithstanding quhairof, it is of verritie, that fic is the perverse difpofitioun of dyuerse perfones, quha, preferring pair awin privat grudge, and revenge arrayfing pairupoun, to

¹ Stock; sheep.

the dew reuerance and obedience of his Maiesteis authoritie and lawis, ceiffis nocht to profecute and follow furthe all godles and indirect meanis to effectuat pair malice, be sic monftruous and vnhard of crewaltie, as the lyk quhair of hes nocht bene hard amangift the *wyld Irisch* and favadge people, let be within any reformat and ciuile pairt of his Maiesteis dominionis : And namelie, the perfonas perticulerlie aboue writtin, be the instigatioun, na dout, of sum perfonas of gritter qualitie and conditioun nor thame selffis, vpon confideratioun, that be landis and leving of *Howpaslet* war deulie and lawfullie conquift and acquyret be vmq^{le} SIR JAMES DOUGLAS of *Drumlangrig*, *knicht*, and he pairby fetlet in posseffioun pairof, be pleniffing of the samyn with his bestiall and guidis ; thay and vtheris of pair unhappie focieatie, altogidder disdaneing that be said *Laird of Drumlangrig* fould inioy or possesse ony landis or possessiones within that pairt of this kingdome ; and pairfoir, plotting and devyfyng all godles and vnlauchfull meanis how to interrupt his peceable posseffioun of the saidis Landis, and to lay the samyn waift, and pairby to mak thame vnprofitable to him and his posteritie—in the moneth of Apryle lastbypast, the saidis *George Scott*, *Walter Scott*, *Ingrem Scott*, and *Jok Scott*, callit *the Suckler*, haifing assemblit and convocat to thame selffis *Williame Scott*, callit in *Satchellis*, and vtheris, pair complices, ffirst keipit ane generall meitting within be *Toun of Hawik*, quhair, in pair devillische counsell, it was concludit and aggreit vnto amangis thame, that, within a fyve or sex dayis pairefter, they fould all meit togidder, vnder nycht, vpon the saidis landis of *Howpaslet*, and pair to slay and distroy the said *Laird of Drumlangrigis* haill bestiall and guidis being pairupoun : LYK AS, accoirding to the foirsaid damnable conclusioun, the said *George Scott*, accompaneit with the said *Williame Scott*, callit of *Satscheillis*, vpon the . . . day of be said moneth of Apryle lastbypast, come, vnder filence and clud of nycht, fra the said *Toun of Hawik*, to *Eilrig-burne-fute*, and the said *Williame Scott* being than mussellit ;¹ at the quhilk place, the said *Jok Scott*, callit *the Suckler*, met with thame ; and pairfra, thay thre past vp the watter, be the space of thre quarteris of ane myle, to ane Cleuch,² callit *Birny-cleuche*, betuix *Eilrig* and *Howpaslet* ; quhair, accoirding to be former appointment, the saidis *Wattie* and *Ingrem Scottis* met with thame : ffra the quhilk place thay foure, accompaneit with the said *Williame Scott*, callit of *Satschellis*, come to the saidis landis of *Howpaslet* ; and pair, being bodin³ with fuordis, bandit stalffis, and vtheris wappones, provydit be thame for be purpois, in ane Cleuch-syde, quhair be said *Laird of Drumlangrig* his scheip war lying in pair lairis,⁴ maist barbaruslie and inhumanelie, as favadge and crewall beiftis, destitute of naturale

¹ Disguised ; *muffled*. Old Fr. *emmuselé*.
hollow between precipitous banks, &c.

² A rocky ascent, or cliff. It also signifies a cleft or
³ Furnished.

⁴ Beds ; folds.

reafone, with pair drawin fuordis and vtheris wappones foirfaidis, ran throw pe haill flock of fcheip, flew, lamet, and menzet¹ to the number of threfcoir of the faid fcheip, quhairof fouretie or pairby war flane, be ftreking of² pair heidis, and cutting thame in tua throw pair bakis ; and the reft of thame, pair fpaldis³ and legis wer ftrukin away fra thame in maift barbarous maner, and war fa left fpreuleing in pair deid-thrawis⁴ vpon the grund of the faidis landis ; committing pairthrow maift haynous and vnhard of Crewaltie and Oppreffion : And the faidis perfones aboue complenit vpon, and ilk ane of thame, ar airt and pairt of the faidis crewall, monftruous, and vnhard of crymes : ffor the quhilk, thay aucht and fould be pwneift be ane exemplarie pwneifchment, to the terrour and example of vtheris to commit the lyk heireftir.

THE VERITIE of pair giltines of the quilkis haynous crymes is cleirlye provin, be the TAIKINIS⁵ following, viz. 1. BE the Depofitioun maid be pe faid *Jok Scott*, callit *the Suckler*, quha was fend for be THE LADY HOWPASLET to cum to pe *Toun of Hawik* ; and at his cuming, haifing met with pe LADY, and with *Jeane Scott*, callit of *Satschellis*, and with pe faid *George Scott*, callit *Mariones Geordie*, at pe *Croce of Hawik*, it was pair concludit amangis thame, that *the Laird of Drumlangrigis* fcheip fould be all flane : AND for that effect, accoirding to pe appointment than maid, a thre dayis paireftir, *Jok the Suckler* come to *Eilrig-burne-fute*, quhair, in the glomeing,⁶ he mett with the faid *Mariones Geordie*, and with *Williame Scott*, callit in *Satschellis*, quha was with pame in companie ; quhilk *Williame Scott* was than muffellit. Lyk as, at pe faid *George Scottis* defyre, the faid *Jok the Suckler* pafst with 3ow and the faid *Willie Scott* vp the watter, the fpace of thre quarteris of ane myle, to ane cleuch callit *Birnie-cleuche*, betuix *Eilrig* and *Howpaslett*, quhair pe faid *Wattie Scott* and *Ingrem Scott* met with thame, the faid *Wattie* and *Ingrem* haifing plaidis and blew bonnettis : ffra the quhilk place thay pafst togidder to *the lands of Howpaslet*, quhair the faid *Laird of Drumlangrigis* fcheip lay, and pair flew pame, in maner fpecifeit in pe Dittay and pe faid *Jok the Suckleris* Depofitioun.—2. To the taikin lykwayis, the faid *George Scott* perfaveing pat *the Suckler* wald nocht pas forwardis to the committing of the fact, he pairfoir drew his fuord, and pairwith thraitnet *the Suckler*, that gif he pafst nocht with him and thair complices to pe deid, he fould hew *the Suckler* pairwith in peces.—3. LYK AS, in regaird of the former Depofitioun fa maid be *the Suckler*, the faid *George Scott* being presentit befoir my *Lord Justice Clerk*, my *Lord Aduocat*, and my *Lord Justice*, and examinat pairupoun ; the faid *George* was content to tak the giltines of pe faid cryme vpon him, gif *the Suckler* wald affirme the vereitie pairof, in his face :

¹ Maimed.
death.

² Off.

⁵ Tokens ; proofs.

³ Shoulders. O. Fr. *espaule*.

⁶ Twilight ; after sunset.

⁴ Struggling in the agonies of

Lyk as, the said *George* and *the Suckler*, being confrontit, he ratifeit and renewit his former Deposition and haill circumstances pairof in the said *George* face; and offerit to haif fochin pe Singular Combat with the said *George*, vpone the verritie pairof.—4. To the taikin lykwayis, pe said *George*, haifing ane dog named *Hyde-the-bastard*, he being convenit at dyuerse tymes with his companjeonis, brak out in thir woirdis, saying, ‘Sa lang as I and my Bastard brother levis (meaning be his dog), *Howpaslet* fall nocht plenische.’¹—5. To the taikin also, eftir pe slauchter of the said scheip, the said *George* being suspectit pairof, and vrget be *James Douglas* to geve ane test,² quhair he was pat nycht of pe barbarous slaying of thame; becaus he could nocht geve pe said test and cleir him selff pairof, he querrellit the said *James Douglas* pairupoun, within the *Towne of Hawik*, and presentit ane bendit³ pistolet to him, of purpois to haif slane him pairwith; quhilk he wuld half schote, gif he had nocht bene stayit be *James Weymes*, *Johnne Scott* callit *Bony Jony*,⁴ and *James Lechen*, quha tuik pe pistolett frome him.—6. To the taikin lyk wayis, the said *George*, being examinat in pe premisses be pe saidis Lordis Examinatouris, vpone the xxviij of December last, and being demandit, quhair he was the tyme of the keiping of the Justice Court of Jedburgh? Declairit, that he come the day of the halding of the said Justice Court to the Toun of Jedburgh, quhilk was vpone ane Thurisday; and vpone the Tyfday and Wedinsday of befoir, was also in Jedburgh, in maner specifeit in his Deposition: Lyk as, the said *George* being removet for a tyme, and of new re-examinat, he was contrair to his former Deposition, declairing, pat vpone the Sondag, Monondag, Tyfday, and Wedinsday befoir the Court, and vpone the Thurisday, the day of halding pairof, he was within the *Town of Hawik*, accompaneit with the persones set down in his posteriour Depositione.—7. To the taikin also, the said *Walter Scott*, at his cuming with *Jok the Suckler* to *Birniecleuche*, the said *Jok the Suckler*, haifing refuset to pas forwardis with him to pe slaying of pe said scheip, the said *Walter*, nochtwithstanding his refuseall, earnestlie delt with him to cum fordwardis, saying to him, ‘JOK, thow art als giltie alreddie as thow canst be, cum fordwardis pairfoir with ws to the deid; and paireftir, thou fall gang with us *Northe*, quhair we will be weill trett and interteneit; for we haif ane place prepairit for our ressett.’⁵—8. To the taikin lyk wayis, the saidis *Walter* and *Ingrem Scottis*, the tyme of pair lait apprehending in pe *Northe*, being inquyret, gif ony of thame knew *Jok the Suckler*? Thay denyit to pair takeris⁶ that evir thay knew him: Bot being brocht to waird to pe *Tolbuth of Edr*, quhair pe said *Jok* being presentit to

¹ Shall not be stocked.
Johnnie.

² Proof or testimonial.

³ Cocked.

⁴ Bonny, or handsome,

⁵ Reception and concealment.

⁶ Examinators.

thame, thay nocht only knew, bot be his name askit him saying, ‘ Quhat now, *Jok!* How come thow heir—and quhairfoir ar thow wairdit¹ in this hous?’ SA that be pe taikinis aboue written, pe saidis perfonis giltines of the said fact is cleirlye provin.

PERSEWARIS, Williame Douglas of Drumlangrig, Sir Williame Oliphant of Newtoun, kny^t, Aduocat.

PRELOCUTOURIS in defence of George, Wattie, and Ingrem, allenarlie,

Mr Thomas Nicolfoun, Laurence Scott, Adame Cunninghame, Aduocattis.

Efter reiding of the DITTAY fet down in the fummondis, at command of my Lord Justice and Assessoris, it is declairit be Mr Thomas Nicolfoun, as prelocutour for George, Walter, and Ingrem Scottis, that he acknowlegis the cryme fet down in the Dittay to be haynous and worthie of condigne puneischment; bot as to the Dittay it felff (nocht granting the cryme thairin mentionet to be of veritie) againis the pannell, alledgis the samyn is nawayis relevant to pas to the knowlege of ane Assyse; nather can the committing of the fact lybellit infer daithe, becaus the grund and fundatioun thairof is vpone tua Actis of Parliament, the first quhairof is the 100 Act of his Maiesteis sevint Parliament, haldin in October 1581, quhilk is only extendit agains the flayeris and hocheris² of horffis, oxin, and vther cattell, the tyme of laubouring the grund; and the vther Act is the 82 Act of his hienes ellevint Parliament, haldin vpone the xxix of July 1587, quhilk is only ane Ratificatioun of the first: Bot the Dittay beiris only the Slauchter and Hocheing of scheip, quhilk is nawayis expreffit nor prohibeit be the saidis Actis: And, thairfoir, the Dittay and Actis of Parliament being disconforme, the samyn can nawayis pas to ane Assyse; speciallie, in respect na penall Statute may be forder extendit nor³ the samyn is fet down *per expressum*: quhilkis Actis he defyret to be red.

It is anfuerit be my Lord Aduocat, that the mynd and intentioun of the lawis, and making thairof, man⁴ be advertit vnto, quhilk is the puneischment of all haynous and detestable crymes, committit be quhatfumeuir way and be quhatfumeuir persone: ffor, als it is estemit ane haynous cryme, be the saidis Lawis, to hoche ane ox or ane horfe, sa the cryme is far moir haynous to flay and cut af ane haill flock of four or fyve scoir scheip, and thairby to displenische and lay waist ane gentilmannis possessioun and rowme; quhilk the haill lawis and Actis of Parliament, vnder the name of ‘ vther cattell,’ expresselie forbidis, and concludis puneischment agains the committeris: In respect quhairof, the Dittay is maist relevant to pas to ane Assyse, nochtwithstanding of the allegiance aboue writtin.

THE JUSTICE Repellis the allegiance; and ffindis the Dittay relevant to pas to the knowlege of ane Assyse. Quhairupone the Aduocat askit Instrumentis.

¹ Imprisoned.

² Hamstringers.

³ Than.

⁴ Must.

ASSISA.

Thomas Wauche of Schawis,
Johnne Coluile in Preiftoune,
Gilbert Greirfoun of Beochane,
George Lyell in Spachhouffis,
Malcolme Dalrumpill of Wat-
terfyde,

Robert Hunter in Halywoid,
Rodger Padzeane of Newtoun,
Thomas Greirfoun of Barjarge,
Archibald Menzeis in Enoche,
Patrik Hair in Glenquhirrie,
Rob. Phillope, burges of Dumfreis,

Adame Trumble in Lyntlawis,
Peter Broun in Durisdeir,
Johnne Mcmorrane of Glasfene,
James Williamesone in Craufurd-
toune.

OBJECTIONS *against certain Assisors passing upon the Inquest.*

It is allegit aganis *Thomas Wauche*, that he can nocht be reffaut vpone this Affyse, becaus he duellis nocht within the foure-halfis-about. Anfueris, aucht to be repellit, in respect he duellis within the Kingdome of Scotland, and he is fummond to pas vpone the tryall of ane haynous cryme.—The Justice admittis him vpone the Affyse.

It is allegit aganis *Johnne Coluile*, that he can nocht pas vpone this Affyse, becaus he is tennent to *my Lord of Angus*, quha is cum to Ed^r at the desyre of the *Laird of Drumlangrig* to assist this perfute. Anfueris, aucht to be repellit, in respect the Erle of Angus nocht present, nather as persewer or defender.—‘Admittis.’

It is allegit aganis *Gilbert Greirfoun*, that he can nocht be admittit, becaus he is tennent to the *Laird of Lag*, quha is present at the bar, assisting the Laird of Drumlangrig in this perfute. Anfueris, aucht to be repellit, in respect he is ane fewart and na removeable tennent.—The Justice, vpone the geving of Gilbert Greirfones ayth, that he is ane ffewart, and that he gaif na partiall counsell, in preiudice of the pannell, admittis him vpone this Affyse.

It is allegit aganis *Robert Phillope*, that he can nocht pas vpone this Affyse, becaus he is the Laird of Drumlangrigis pensfioner.—The Justice, in respect of Robert Phillipis ayth, gevin be him, that he is nocht Drumlangrigis pensfioner, and that he hes na guid deid of him, bot as ane vther gentilman of the cuntrie respectis and honouris him, Reffaues him vpoun the Affyse.

It was, eftir his admissioun and reffaueing, allegit be Laurence Scott, in name of the pannell, that *Robert Phillope* can nocht pas vpone this Affyse, becaus he is Bailzie Clerk to the Laird of Drumlangrigis Regalitie. Anfueris, he can nocht be declynet nor put af the Affyse, eftir his ayth tane, and purgatioun of partiall counfall; speciallie, feing it is vpone tryell of ane cryme, quhilk is *factum obsecrum et clandestinum*.—The Justice ordanis him to remane ane Affysfour.

THAIREFTIR, the Dittay being of new red, in presens and audience of the Affyse, with the Taikynes producet be the persewer for verificatioun thairof, it is allegit be Mr Thomas Nicolfone, in name of *George Scott, Walter and Ingrem Scottis*, that the Taikynnis producet and red for cleiring of the Dittay, fould nawayis be respectit be the persones of Inqueist, nather ar the saidis Taikynnis concluding argumentis to verifie the Dittay. And *ffirst*, the Depositiones maid be *Jok Scott*, callit the *Suckler*, fould nawayis be respectit, becaus he being apprehendit for the samyn fact, and haifing confessit him selff to be *socius eiusdem criminis*, his Deposition can nocht work aganis ony honest man quha is innocent; and thairfoir fould nocht be respectit. *Secundo*, as to the Taikin foundit vpone *George Scottis* dog, albeit the samyn be na grund to infer the Slauchter of the scheip lybellit, zit he denyis it. *Tertio*, the Taikin for slaying and querrelling of *James Douglas* inferris nathing; becaus he was nocht bund to confes or schaw him any test quhair he was the nycht of the slaying of the

scheip; and as to the Taikin it self, denyis the samyn. *Quarto*, concerning his Deposition maid be him, quhair he was the tyme of the Justice Court of Jedburgh; the samyn inferris nathing for probatioun of the Dittay; And as to his contrair Deposition, that he was in Hawik, it can nawayis infer him to be culpable of the cryme. And allegis, that the haill former Taikynnis previs na thing aganis *Walter* and *Ingrem Scottis*. *Item*, the last taikin anent *Walter* and *Ingrem*, that thay war tryet the tyme of thair taking, gif thai knew *Jok the Suckler*; thair granting or nocht granting thairof can nawayis infer thame to be giltie of the fact.

THE *Laird of Drumlanerig*, being suorne, and his aithe tane thairof, gif¹ he hes just cause to persew the pannell for the crymes contenit in the Dittay, as giltie and culpable thairof? Declairit, that this Dittay is suorne to him to be of veritie, be honest and credible men, viz. that *George*, *Walter*, and *Ingrem* war thre of thame that was at the slauchter of his scheip, in maner specifeit in the Dittay: And thairfoir, be his ayth, declairit that he hes just caus to persew thame, as doaris of sic ane odious fact. And as to *Jok Scott*, callit *the Suckler*, he hes also hard of his meitting and keiping tryftis with thame in that matter; bot, in respect he is nocht certanelie informet that he was at the doing of the deid, he can nocht persew him as ane principall committer: And finallie, declairit, that gif he war nocht persuaidit, in his conscience, that the saidis *George*, *Wattie*, and *Ingrem Scottis* war the special slayeris of the scheip, (be quhais directioun the samyn was done, remittis that to thame selfis,) he wald nocht haif followit thame thairfoir.—Quhairvpone my lord Aduocat askit instrumentis.

My Lord Aduocat, for preving of the Dittay, repeittis *the Laird of Drumlangrigis* ayth and Declaratioun: Producet the Depositiones of *Jok Scott*, callit *the Sukler*; and repeittis his ratificatioun thairof in judgement, and constant affirmatioun of the veritie thairof in the vtheris thre faces:² And lykwayis, repeitis the Actis of Parliament red, quhairvpone the Dittay is foundit: And desyres the Assyse to considder the haynousnes of the cryme; and Protestis for Wilfull Errour aganis thame, gif thay Acquit the pannell thairof.

VERDICT. The Assyse, all in ane voce, be the mouthe of the said Thomas Wauche of Schawis, chancellor, ffand, pronuncet, and declairit the saidis *George Scott*, *Walter Scott*, and *Ingrem Scott*, to be ffylet, culpable, and convict of the actual slaying of the said Laird of Drumlangrigis scheip, in maner specifeit in the Dittay: AND siclyk, ffand, pronuncet, and declairit the said *Jok Scott*, callit *the Sucler*, to be Culpable, ffylet, and convict of being vpone the counsell and foirknowledge of the fact aboue writtin, and in keiping of dyuerse tryftis and meattingis with the vther thre, conforme to his awin Deposition: And Clengis

¹ If.² When confronted with them.

him of the actuall deid, be fleing away fra the doing thairof, befoir it was committit.

SENTENCE. The Justice, be the mouth of Johnne Dow, dempfter of Court, Decernit and Ordanit the saidis *George Scott*, *Walter Scott*, and *Ingrem Scott*, to be tane to the Mercat-croce of Edinburgh, and thair to be hangit vpone ane gibbet, quhill thay be deid: And all thair moveabill guidis and geir to be escheit and inbrocht to his Maiesteis vse, as culpable and convict of the crymes aboue specifeit. AND lykwayis, Ordanit the said *Jok Scott*, callit *the Suckler*, to be tane bak to waird, thair to remane vnto the tyme he (the Justice) be advyset with the Lordis of Secreit Counfall, anent his dome.¹

APPENDIX ILLUSTRATIVE OF THE PRECEDING TRIAL.

I. LETTER, *the Laird of Drumlanrig to Murray of Lochmaben.*²

RICHT WORTHIE AND LOWING BROTHER,

ZE remember, in on of my former Letteres, I schew 3ow, pat I had gotin sum tryall³ of that uylde and barbarous uillanie quhilk was comitit, in pe slaying of my scheip, quhen I was last at Court; quhairin I did than write pe more spairinglye, being lothe (in respect of 3owr griter affaires) to trubill 3ow with it, till I had brocht it till sum further cleirnes; quhilk now I have done, and hes tuo fallowis presentlie in hand pat war actoris in it; pe on callit *Jok Scott the Sukler*, quho hes confessit pe simpell treuth, in all poyntis, both of his auin pairte, and pe rest pat war with him at pat filthie actioun; to wit, *Geordie Scott the Soutor*, callit *Mariounes Geordie*, *Watt Scott*, callit *Braidis Wattie*, *Willie Scott*, callit of *Satchelis*, and *Ingrum Scott*. This *Succler*, in his Confessioun, he condiscendis cleirlye both vpoun pe tyme, place, and forme of thair meiting and pairting, with all wther takinis and circumstances pat past amongst thame, quhen they war togidder (as his Deposition beiris.) Nochtwithstanding this vther, callit *Geordie Scott the Souter*, (quhom I have also in handis,) standis zit to his denyall, altho they be many grit presumptiounis of his guiltines; aluayis⁴ *the Suckler*, being sundry tymes examinat and confrontit with him befoir THE LORDIS OF COUNSALL, he abydis constantly at everye poynt of his first Confessioun; and offeris, nocht only to fecht *the Souter* on it, bot all pe rest, everie on of thame efter another, quhensoever they can be had, gif it will pleis HIS MA^{TIE} and THE COUNSALL to suffer him. The vther thrie ar fugitiues for that and vther crymes of Thift and Slauchter; and, as I wnderstand, ar all out of the countray, sum in *Irland*, and sum ellis quhair; vtherwayis, befoir this tyme, I think I had fund meanis to haue gotin thame in handis, (zit according till our auld Scottis proverb, 'Ane 3ule feist may be quat at Pafe!' Quhen perhapis they may imagin it be forgot.) In the meintyme, let me intreit 3ow, pat ze will do me that fauowr to motioun this maiter to HIS MA^{TIE}, quhairby I may have it, by his Letter, recommended to pe Counfall, nocht only for pe exact tryall and punischment thairof to pe daithe, for pe wrang that is alredie done, bot also to terrifie all other malefactoris from attempting pe lyk heirefter; quhilk, I protest to God, I ponder more in respect of pe preparatiue and consequens pat may follow thairvpoun to pe preiudice of pe comounweill of pe countray, in cais it be lichtlie passit over vnpunischit, than for any particular of my awin. Now, gif ze find it expedient, it war nocht amis, feing the *Shanfler*⁵ and *Secretar*⁶ (quha knawis pe

¹ It is likely that the Suckler had been promised his life, when he turned informer; but being a most dangerous character to turn loose on society, the public prosecutor appears to have been instructed by the Council to rake up a few of his former misdeeds, and have him cleverly put out of the way. See the following Case, Jun. 21, 1616.

² From the Original, preserved among the *Denmylne MSS.* Adv. Library.

³ Proof; evidence.

⁴ Nevertheless.

⁵ The Lord Chancellor, Alexander Earl of Dunfermline.

⁶ Thomas Earl of Haddington.

haill estate and progress of this buffines) ar to be with HIS MA^{TIE} at Court, that 3e fould haue thame neir-hand by, quhen 3e propoun it to HIS MA^{TIE} at Court, in cais he hapin to defyre thair opinioun in it. And this, I wald befeik 3ow to do with all pe conuenient haift 3ow can, pat I may have 3owr anfuer with HIS MA^{TIES} Letter befor pe feuinth or aucht of pe nixt month, becaus I do intend, God willing, at pat tyme, to have thir tuo fallowis, at leift on of thame, put to the tryall of ane Affyse; at quhilk tyme (if nocht befor thane) I do affuir my self pat God fall mowe pe hart of him quho standis most obstinatlie to his denyall, euin to confefs the treuth, as pe other hes done: albeit thair be sum buffie-headit men heir, quhom I will nocht name at this tyme, pat wald wis pe contrair; and ar deiling, be all meanis possibill, so far as in thame lyis, to pat effect; bot be pe grace of God, and HIS MA^{TIE} fauowr, with 3owr help, I howp to disapoynt pame. As for the rest of my particularis, I trust 3ow will nocht be forgetfull of thame; and when 3ow find 3owr auin tyme, will let me knaw, pat I may luik for in pame. So I hawe no more to say, bot alwayis efter on¹ I rest,

3owris in quhat I can to ferue 3ow,

EDINBURT, the vi day of

DRUMLANGRIG.

Januar, 1616.

3ow will do me pe fauowr to present my humbill seruice to 3owr lady.

To his muche honoured and worthie broper JOHN MURRAY of Lochmaben, Grume of his Ma. Bed-chamber, Thes.

II. "CONTRACT BETUOX THE SCOTTIS AND THE KERRIS."

(It has already been noticed, in the Introduction to the present Trial, that the Editor has been fortunate enough to discover the Original BAND or CONTRACT referred to by *Sir Walter Scott*, preserved in Record of Deeds,² Mar. 23, 1564. This remarkable and interesting document is preceded by a solemn entry in the Register, in these words. "In presens of the Lordis of Counsale, compeirit (SIR) WALTER SCOTT of *Branxholme*, with his Curatouris vndirwrittin, personalie, except ane nobill and mychté lord, *James Duke of Chatteaultrault*, quha compeirit be *Maister David Borthuik*, his procuratt, one that ane pairt; and SIR WALTER KER of *Cesfurde*, kny^t, for him self, and takand the burding vpoune him for his barnis, and the remanent of his kynd frendis, specifeit and contenit in the Contract vnderwrittin, personalé, on that vther pairt; and gaif in the samyn, subscriuit with thair handis, as followis; and desirit the samyn to be insert in the Bukis of Counsale, and to haue the strenth of ane Act and Decreit of the Lordis thairof, and thai to interpone thair auctoritie to the samyn," &c.

It is only necessary, farther, to refer the reader to the valuable annotations of *Sir Walter Scott*, appended to 'The Lay of the Last Minstrel,' for a perfect knowledge of the deadly Feuds which had so long raged between two of the greatest Border Families, the SCOTTS and KERRS, to 'staunch' which was the professed object of the present BAND.)

AT EDINBURGHE, pe xxij day of Marche, the 3eir of God Im.Vc.lxiij 3eiris. IT is appointit, aggreit, and finalé concordit, betuix rycht honorabill menne, SIR WALTER KER OF CESFURDE, KNYT,⁵ for him self, and takand pe burding vpoune him for his barnis,⁴ and for his bruder *Mark Commendater of Newbottle*, and his barnis; *Johnne Hume of Coldenknowis*, and his bairnis; *Andro Ker of Fawdounfyde*, his bairnis and breder;⁵ *Thomas Ker of Marfingtoun*, his fader-bruder,⁶ and pair bairnis; *George Ker of Lyntoune*, his bairnis, his oyis,⁷ and bruder-bairnis;⁸ *Richard Ker of Gaitschaw*, his bairnis and breder; *Andro, Williame, and Johnne Kerris*, brether to *Sir Thomas Ker of Pharny-hirst*, kny^t; *Mark Ker of Kippeschaw*, and his sone *Robert Ker* of Bothtowr; *Robert Ker* elder, burges of Edinburgh; and all vperis pair barnis, brether, kynne, freindis, menne, tennentis and fervandis, except pe freindis vnder specifeit, nocht comprehendit vnder pis appoyntment, one pat ane pairt; AND WALTER SCOTT OF BRANXHOLME AND BUKCLEUCH,⁹ with consent and assent of ane rycht michté

¹ Always after one; steady; unchangeable. ² General Register House, Vol. VII. fol. 131. ³ Ancestor of the Ducal Family of *Roxburghe*. He married *Isabel*, daughter of *Sir Andrew Kerr of Fernihirst*. ⁴ Children. ⁵ Brothers. ⁶ Uncle. ⁷ Grandchildren. ⁸ Nephews and Nieces. ⁹ He married *Lady Margaret Douglas*, eldest daughter of *David*, seventh *Earl of Angus*, niece of the Regent Morton. This great man died Apr. 17, 1574. It was his son who performed the matchless exploit of relieving *Kinmont Will*, Apr. 13, 1596, from the Castle of Carlisle, being accompanied with a mere handful—only 200 horse!

and noble lord, *James Duke of Chatteaularault, Erle of Arane, Lord Hammiltoun, &c.*; *Sir Johnne Maxwell of Terreglis, kny^t*; *Sir Johnne Bellendene of Auchnoule, kny*, Justice Clerk; *Maister Johnne Spens of Condé, Aduocat* to our souerane Lady; *Andro Murray of Blak-Barony, Michell Balfour of Burlye, Thomas Scott of Haning, and Robert Scott of Thirlstane*, Curatouris to pe said WALTER, for pair interes, for him self, and takand pe burding vpoune him for HIS HAILL SURNAME, and pe Relict and bairnis of vmq^{le} *Sir Walter Scott of Branxholme, kny^t*, his gudeschir,¹ and als for *Williame Cranfioune of that ilk*, his bairnis and breder, the brether of vmquhile pe *Laird of Chisholme*; *Johnne Glaidstanis of that ilk*, and his bernis; *James Langlandis of that ilk*, and his bairnis; *Walter Vache of Syntoun*, and his barnis; and for *James Ormifloun of that ilk*, conditionally, as followis; and als, for all vperis his kynne, freindis, servandis, menne, tennentis, assistaris, and pairtakeris, one pat vper pairt; in maner, forme, and effect, as efter followis. THAT IS TO SAY, pe said LARD OF BUKCLEUCHT, nor na vper for quhome he takis burding, as said is, fall ony way perfew pe said LARD OF CESFURDE, nor na vper comprehendit vnder pis present appointment, criminalé nor civilie, for ony Slauchter or blude committit in tyme bipast, and is content to be perpetuallie secludit pairfra, *per pactum de non petendo*; and fall neuer move actioun, beir hatrent, grudge, or displefour pairfor, bot bury and put pe samyn vnder perpetuale filence and obliuione; and to leif in perfite amité, lufe, and Cristiane nyctburheid, in all tymes cuming. PROVIDING alwayis, pat heirby pat pe said LARD OF BUKCLEUCHT, and all vperis quhome he takis burding, be na wayis preiugit anent pair actionis quhatfumeuir pat pai haif intentit or may intent aganis *Sir Thomas Ker of Phairneyhirst, kny^t*, *Sir Andro Ker of Hirfell, kny^t*, *Robert Ker of Woidheid, Johne Haldane of that ilk, Gilbert Ker of Prymsydloch, James Ker of Torbet, Robert Ker of Gradene, Andro Ker of Hietoune*, pair barnis, brether, and seruandis, and all vperis pat ar nocht comprehendit vnder pis appointment; bot pat pai may perfew and obtene pe samyn as pai think maist expedient, be pe law; and pat becaus pe saidis personis, being requirit be pe said LARD OF CESFURDE to cum with him, and to do pair devore, for pair pairt of pis appointment, hes refusit to do pe samyn; and als, becaus pat in pis present appointment, pair is na proffett nowther gevin nor takin, quhairby pe said LARD OF BUKCLEUCHT, and his freindis and vperis foirsaidis, ar preiugit anent pair saidis actionis; and pat it is pe exprefs mynd of all pe pairteis presentlie contractaris, pat pe samyn be fulllelie reservit: AND siclyk, vpone pe vper pairt, pe said LARD OF CESFURDE, nor na vperis quhome-for he takis pe burding, fall in ony wyise perfew pe said LARD OF BUKCLEUCHT, nor na vperis his kynne, freindis, servandes, menne, tennentes, assistaris, or pairt-takaris, criminalé or civilé, for ony slauchter or blude committit in ony time bipast; and is content to be perpetuallie secludet pairfra, *per pactum de non petendo*; and fall nevir move actioun, beir hatrent, grudge, or displefour pairfoir, bot bury and put pe samyn vnder perpetuall filence and obliuione, and to leif in perfite amité, lufe, and Cristiane nyctbourheid, in all tyme heirefter. ATTOUR, it is heirby expresse and faythfullie contractit, pat for mair fuir removeing, stenching,² and away-putting of all inymité, hatrent, and grudge, standand and confavet betuix pe saidis pairteis, throw pe unhappie slauchter of pe said vmq^{le} *Sir Walter Scott of Branxholme, kny^t*,³ and for pe better continuance of amité, favour, and freindschip amangis pame in tyme cuming, the said SIR WALTER KER of *Cesfurde, kny^t*, fall, vpoun the xxij day of Marche instant, cum to THE PARROCHE KIRK OF EDINBURCHT, now commonelie callit SANCT GEILLIS KIRK, and pair, befoir none, in fycht of pe pepill present for pe tyme, reuerently vpone his kneis ask God mercy of pe slauchter foirsaid; and siclyk, ask forgevenes of pe same fra pe said LARD OF BUKCLEUCHT, and his freindis, quhilkis salhappin be pair present; and pairefter promise, in pe name and feir of God, pat he and his freindis fall trewlé keip pair pairt of pis present Contract, and fall stand trew freindis to pe said LARD OF BUKCLEUCHT and his freindis, according heirvnto, in all tyme cuming. THE quhilk pe said LARD

¹ Grandfather.² Stauching; extinguishing.³ This great man was unhappily slain on the streets of Edinburgh, in October, 1552. To pave the way for a lasting reconciliation between the Clans, a Remission was granted to Sir Walter Kerr of Cessfurd, and to John Kerr of Fernihirst, under the Great Seal.

OF BUKCLEUCHT fall reuerentlé accept and reffaue, and promife, in pe feir of God, to remit his grudge, and neuer remember pe fame; bot fall obferue and fulfill his pairt of pis present Contract to pe faid LARD OF CESFURDE, according to pe tennour pairof, ficlyk, in tyme cuming. AND als, *Thomas Ker*, fecund fone to pe faid LARD OF CESFURDE, fall, God willing, folempnizate and compleit pe band of matrimony, in face of Chriftis Congregatione, with *Scott*,¹ fifter to pe faid LAIRD OF BUKCLEUCHT, betuix pis and pe laft day of Maij nixttocum, but ony tocher² to be payit be hir faid bruder, or ony vper freindis with hir: And pe faid LARD OF CESFURDE fall provide pame ane honeft and reffonable fufentatioune and leving, efferand³ to pair eftait and conditioune; and als, fall caus pe faid be infeft in her virginité, in coniunct-fee or lifrent, with hir faid future fpous, and pair airis lauchfullie gottin or to be gottin betuix pame, quhilk failzeing, pe faid *Thomas* airis. quhatfumeuir, in all and haill landis or annualrent of pe avail of ane hundreth merkis be zeir, to be haldin of pe Superior be Refignatioun or Confirmatioune, at pe plesour of hir faid bruper; and paireftir, pe faid to be infeft in coniunct-fee or lyfrent with hir faid future husband, at his and his faid faderis gude will and pleafour, in fik landis and leving as pai pleis mak hir; quhilk is referrit in pair will. AND ficlyk, *George Ker*, eldeft fone and apperand air to pe faid *Andro Ker of Fawdounfyd*, fall, God willing, folempnizeat and compleit pe band of matrimony, in face of Chriftis Congregatione, with *Jonett Scott*, fader-fifter to pe faid LARD OF BUKCLEWCHT, fa fone as pai fall be of perfyte age and habilitie for mariage, but payment of ony tocher to be payit be him, or vper hir freindis with hir. AND gif it fall happin pe faid *George* to deceis, befoir pe compleiting of pe faid mariage, pan and in pat cais, his nixt bruper pat falhappin to appeir or fuceid air to his faid fader or him, fall marie the faid *Jonet*, tocher-fré; and ficlyk, failzeing of hir be deceis, befoir pe faid mariage, pan and (in) pat caife pe faid *George*, and failzeing of him be deceis, his nixt bruper foirfaid, fall folempnizeat and end mariage with hir nixt fifter pat falhappin pan be alyve, tocher-fré; and fua, falang as pe faid *Andro* fall haif ane fone, and the faid *Jonet* ane fifter, pe ane to marie pe vper tocher-fré, as faid is; ay and quhill mariage be anis complete amangis pame: AND gif (it) falhappin pe faid mariage to failzie in pe faidis *Georgis* or ony vper his brederis defalt, pan and in pat cais, pe faid LARD OF CESFURDE, be the tennour heiroy, obliffis him and his airis to pay and deliuer the fowme of ane thoufand merkis to pe faid *Jonett*, or to hir vper fifter to quhome pe faid mariage fall failzé, within XL dayis nixt eftir pe faid failzé be knawin. ATTOURE, becaus pe faid LARD OF CESFURD hes of befoir requyrit and defyrit, vnder pe forme of instrument, *Sir Thomas Ker of Pharnyhirft, kny^t*, *Sir Andro Ker of Hirfell, kny^t*, and *Gilbert Ker of Prymfyldloch*, for pame and pair freindis to adheir, concur, and affist to him in pis present aggreance, and pat pai haif refufit pe famin, as is aboue writtin, thairfoir pe faid LARD OF BUKCLEWCHT, nor his airis, fall nocht aggré with pame, or ony of pame, by⁴ pe awyfe of pe faid LARD OF CESFURD and his airis; and gif it falhappin pe faid LARD OF BUKCLEWCHT, or his airis, to aggré with pe faidis *Sir Thomas*, *Sir Andrew*, and *Gilbert*, or ony of pame, by⁴ pe awyfe of pe faid LARD OF CESFURD, befoir pe completing of mariage betuix pe faid *George* or ane of his brethir with the faid *Jonet* or ane of hir fifteris, as faid is, without pe faid LARD OF CESFURDE be previe and consent pairto, than and in pat cais, pe faid *George*, nor nane of his brethir, falbe haldin or astrictit to compleit pe faid mariage, bot falbe fré pairof; nochtwithftanding pis present Contract, and ficlyk as gif the famyn had neuir bene maid. AND lik wyife, gif it falhappin pe faid LARD OF BUKCLEWCHT to aggré with pe faidis perfonis, or ony of pame, eftir pe completing of pe faid mariage betuix ony of pe faid *Androis* fonis and pe faid *Jonet*, or ony hir fifteris, by⁴ pe avyife of pe faid LARD OF CESFURDE, than and in pat caife, pe faid LARD OF BUKCLEWCHT obliffis him, with auife of his Curatouris foirfaidis, to content

¹ JANET, the eldeft fister of Sir Walter Scott of Buccleuch, was married to Sir Thomas Kerr of Fernihirst, in anno 1569; 2. MARGARET, to Sir John Johnston of that ilk; 3. ELIZABETH, to 'the Captain of Crawford,' Sir John Carmichael of Meadowflat.—*Wood's and Crawford's Peerages*. ² Without any dowery or marriage-portion. ³ *Effeir- ing*; corresponding. ⁴ Without; contrary to; independent of.

and pay to pe said LARD OF CESFURDE pe soume of ane thowfand merkis, as for pe tocher of pe said *Jonet*, or ony vper her sifter pat hapnis to be nearest, within XL dayis nixt eftir pe said aggreance, gif it happynnis to be maid, as said is; but¹ ony exceptione or remeid be vertew of pis present Contract, quhairby pe said mariage fuld be tocher-fré, as is aboue specifeit, to be proponit or allegeit in pe contrar. PROVIDING alwayis, pat gef pe said LARD OF BUKCLEUCHT aggré with pe saidis *Sir Thomas*, *Sir Andro*, and *Gilbert*, or ony of pame, with auise of pe said LARD OF CESFURDE, than and (in) pat cais pe said LARD OF CESFURDE fall not laubour nor desyre pat pair offeris, ellis² offerit, be diminissit, bot rather pat pai be augmentit. AND zit, mairouer, becaus pair is particularelie deidlie Feid and actionis betuix pe said WALTER KER OF CESFURDE, *knycht*, and pe said *James Ormstoune of that ilk*, thairfoir pai salbe compromittit³ in *David Spotifwod of that ilk*, and *Thomas Hoppringill of that ilk*, to be chofin for pe pairt of pe said LARD OF CESFURDE; and in *James Langlandis of that ilk*, and *Nicholace Ruperfurde of Hundley, knycht*, to be chofin for pe pairt of pe said *Lard of Ormstoune*; and in odmanne and ourmanne,⁴ in caise of vareance or discord betuix pe saidis Jugis, to be comonele⁵ chofin be bayth pe saidis LARDIS OF CESFURDE and BUKCLEUCHT, anent pe taking, be pe said *Lard of Ormstoune*, of pe landis of *Nether Ancrome* and *Bailleie* pairof, in Tak, our pe said LARD OF CESFURDE heid, it being his kyndlie rowme⁶ of befoir, as he allegis; and anent pe slauchter of vmq^{le} *Best*, servand to pe said LARD OF CESFURDE: AND als, anent all vper materis, actiones, querrellis, and debeittis betuix pame; and pai to be bund to abyde at pe decreit and sentence of pe saidis Jugis and ouermanne, or maist pairt of pame, deliuerand in pe saidis materis, quhilkis salbe haldin to deliuer pairin, betuix pis and pe first day of August nixtocum; and ane compromit⁷ to be maid pairupone, and extendit in ampill forme, as vse is in sic caissis. AND gif it salhappin pe said *Lard of Ormstoune* to reclame fra pe Decreit to be gevin be pe saidis Jugis and ouermanne, or maist pairt of pame, and nocht to abyde pairat, and fulfil his pairt pairof, as he fall be ordanit be pe same, than and in pat caise, pe said LARD OF BUKCLEUCHT fall refuse him, and fall nowther manteine, fortifé, nor assist him pairefter, in ony tyme cuming; bot fall tak pairt and fortifé, in honest and lesun⁸ maner, with pe said LARD OF CESFURDE, in his contrar. AND gif pe said LARD OF CESFURDE salhappin to reclame fra pe said Decreit to be gevin as said is, than and in pat caise, pe said LARD OF BUKCLEUCHT fall tak pairt with pe said *Lard of Ormstoune*. AND finalé, pe saidis pairteis, be pe tennour heirop, bindis and oblissis pame and pair airis, pat pai and personis abouewrittine, for quhame pai haue takin burding, respectiue, for pair awin pairtis as said is, fall in all tyme cuming keip and retene amité, freindschip, lufe, favour, and kyndnes, ilkane to vperis,⁹ without ony grudge, or occasioun to be mouit in pe contrar, be pame or ony of pame, to vperis,¹⁰ be ony maner of way, in tyme cuming. AND gif it salhappin ony contraversé or pley to fall betuix ony of pe freindis abouewrittin, comprehendit vnder pis present Contract, for taking of vperis steding or rowme,¹¹ owther in tyme bigane or tocum, thanne and in pat caise, pe mater salbe first schawin to pe saidis LAIRDIS OF CESFURDE and BUKCLEUCHT, be quhais avise pe saidis pairteis sal cheis¹² foure frendis, with ane ouermanne as pai can aggré one, for ending and deciding of pe said contraversé; and gif pe pairteis can nocht aggré one pe said ouerman, pan and (in) pat cais pe saidis LARDIS OF CESFURDE and BUKCLEUCHT fall cheis ane ouermanne quhame pai can aggré one; quhilk ouermanne being chofin be pame, it fall nocht (be) lesun to pe pairteis to refuse him, bot to approve and chuse him: and gef pe saidis LARDIS can nocht aggré one pe said ouerman, than and in pat cais, pai fall huimlé fwte¹³ and desyer pe QUENIS MAIESTIE and COUNSALE to cheis ane ouermanne; quha being chofin, pe pairteis salbe haldin and bund to stand content with him, and to abyde at his and pe Arbitratouris delyuerance, or maist pairt of pame delyuerand; vpon pe contra-

¹ Without, &c.
Oversman.

² Already.

³ Compromised; referred to the arbitrament of.

⁴ Umpire and

⁵ Mutually.

⁶ Certain property held by him and his ancestors as *kyndlie tenants*.

⁷ Award;

Decreet Arbitral.

⁸ Lawful.

⁹ To each other; each party to the other.

¹⁰ Each other.

¹¹ For

taking each other's farm-steading or possession.

¹² Elect; choose.

¹³ Make suit; petition.

verfé pat falhappin to be debatabill for pe tyme, but¹ ony declaratioune to be maid in pe contrar. AND for obferuing, keping, and fulfilling of all and findre pe premisses, aper of pe saidis pairteis bindis and oblißis pame faithfullie to vperis,² in pe maist strait forme and ficker stile of obligatioune can be dewifit, but³ fraud or gyle, na remeid nor exceptionne of law quhatfumeuir to be proponit or allegeit in pe contrar; renunceand pe famin, for pame, pair airis, executouris, and assignais, for now and evir, be pir presentis. AND for pe mair securité, pai ar content pat pis present Contract be infert and registrat in pe Bukis of Counsale, and decernit to haue pe strenth of ane Act and Decreit of pe Lordis pairof; and pat Letteris and executorialis to be direct pairvpone, for compelling of aper of pe saidis pairteis to fulfill pe samyn, for pair pairteis, to vperis, in forme as efferis: AND for acting and regiftrating heirof, pe saidis parteis makis and constitutis, be pir presentis,⁴ [*Maister David Borthuik*] thair vndowtit and irrevocabill procuratouris, gevand and committand to pame, coniunctlé and feueralé, pair full power, expres bidding, and chaarge, to compeir befoir pe Lordis of our fouerane Ladeis Counsale, quhatfumevir dayis and place lauchfull; and pair defyir pis present Contract to be registratt in pe saidis Bukis of Counsale, and pe saidis Lordis to interpone pair auctorité pairto; promittand⁵ to abyd ferme and stabill, &c. IN WITNES of pe quhilk thing, bayth pe saidis pairteis and Curatouris abouewrittin, for pair intereis, hes subscriuit pis present Contract with pair handis; and als DAME JONET BETOUNE,⁶ pe relict of pe said vmq^{le} *Sir Walter*, hes, in signe of hir consent to pe premisses, subscriuit pe famin with hir hand, day, zeir, and place foirfaides, befoir pir Witneßis, *Sir James Douglas of Drumlanrig, knyght, Johne Stewart of Trocquair, Patrik Murray of Fallowhill, Murray of Cokpule, and Thomas Sinclair*, Writter to pe Previe Seall, with vperis diuerse.

[*Sic subscribitur*] WALTER KER OF CESFURD. WALTER SCOT OF BUKCLEWCH. JANET BETOUNE, LADY OF BUKCLEWCH. JAMES.⁷ THOMAS SCOT OF HANYNG. M. JOHNE SPENS, Curatour aboue writtin. JOHNE MAXVELL. J. BELLENDENE, as Curatour. ROBERT SCOT OF THIRLSTANE,⁸ with my hand at pe pen, led be *David Lauté*, Notare Publict.⁹

III. BAND *subscruit* at KELSO, be THE BARONIS, &c. of the Scherefdomes of BERWIK, &c. 6th April, 1569.

(THE Editor believes that little apology will be deemed requisite for once more encroaching on the limits of this work, in his desire to preserve, in this place, the following remarkable document, the original of which is deposited in the General Register House, Edinburgh. The reader will readily perceive, that it is chiefly from an extensive perusal of such original and authentic Papers, that he can expect to arrive at a minute knowledge of the internal state of Scotland during the darkest periods of our History.)

BE IT KEND till all men be pir present letteres, WE THE BARONIS, landit men, Gentilmen, Inhabitantis of THE SCHEREFDOMES of BERWIK, ROXBURGH, SELKIRK, PEBLIS, and Proveßtis and Baillies of Burrowis and Townis within pe saids boundis, in name of pe Inhabitantis of pe samyn, vnder-subscriuand, to be bundin and obleift, and be pe tennour heirof, bindis and obleißis ws to pe KINGIS MAIESTIE, oure fouerane lord, and his dearest coußing JAMES ERLI OF MURRAY, Lord Abernethie, REGENT to his hienes his realme and lieges, as followis: THAT IS TO SAY, fforfamekill as my said

¹ Without. ² Each other. ³ Without. ⁴ In all deeds where a clause for Registration is inserted, a blank is left to insert the name of the Procurators. In the present instance, all the parties appeared personally, with the exception of the Duke, who had granted a procuration to the person whose name is filled up, according to custom, in the Register. ⁵ Promising. ⁶ This able Lady has been rendered immortal by *Sir Walter Scott*, in his *Lay of the Last Minstrel*. She was daughter of *John Beaton of Creich*, and possessed the hereditary abilities of her family to such a degree, that the superstition of the vulgar attributed them to magic. After her husband's murder, she rode at the head of her Clan. ⁷ James Duke of Chastelherault, who uniformly adopted this princely mode of subscribing his name. ⁸ Ancestor of Lord Napier; a better swordsman than an expert clerk. ⁹ It was by no means unusual, at that period, that persons of considerable rank were but indifferently skilled in scholarcraft. All business of importance was of old transacted by churchmen or notaries; the office of which last was frequently performed by priests, who thereby added considerable emoluments to the revenues of their monastery.

lord Regentis grace hes at all tymes, and specialie sen his acceptatioun of þe regiment of þis realme, takin greit and paynefull travellis in þe quieting of þe bordouris pairof, and namelie of þe rebellious people Inhabitantis of þe cuntrie of LIDDISDAILL, and vtheiris Thevis, AND we having regard to the innumerabill flaughteris, fyre-rafigis, heirschippis, and detestabill enormities, dalie committit be þame vpoun þe peceabill and trew subiectis of þis realme, in tymes bipast, quhairin pai ar nocht abill to execute pair crueltie, gif we, in þe feir and obedience of God and our fouerane lord, aufauldie¹ concur togidder to resist þame, THAIRFOIR we, and euerie ane of ws, underscrivand, be thir present letteres, avowis and declairis our selffis obedient subiectis to THE KINGIS MAIESTIE, oure onelie fouerane lord and his authoritie, and professit inymeis to all Thevis, Inhabitantis of THE CUNTRIE OF LIDDISDAILL, ESKDAILL, EWISDAILL, and ANNANDERDAILL; and in speciall, to all personis of þe suirnames of ARMESTRANG, ELLOT, NIKSOUN, CROSER, LITTILL, BATESOUN, THOMSOUN, IRWING, BELL, JOHNNESTOUN, GLENDONYNG, ROUTLAIGE, HENDERSOUN, and SCOTTIS OF EWISDAILL, and wperis notorious Thevis, quhair euir pai dwell, and to pair wyffis, bairnis, tennentis, and seruandis; Obliffand ws, þat we nor nane of ws at ony tyme heireftir, fall reffet, supplé, or intercommoun with ony of þe saidis Thevis, pair wyffis, bairnis, or seruandis, or gif þame meit, drink, hous, or herbry; or suffer ony meit, drink, or victuallis to be bocht, had, or cairit to þame, furth or throw our landis, baillieries, townis and boundis, quhair we may lett:² Nor 3it fall we tryist or haue intelligence with þame, in previe or apairt, without knowlege and leif of THE WARDANE obtenit to þat effect: Or suffer þame to resort to Marcattis or tryistis, throw oure boundis: Nor 3it permit þame, pair wyffis, bairnis, tenentis, or seruandis, to dwell, remane, or abyde, or to pasture pair gudis³ vpoun ony landis outwith LIDDISDAILL, except sic⁴ as within viij dayis eftir þe dait heiroy, fall find sufficient and responfall fouerteis⁵ to THE WARDENIS OF THE MARCHES and their clerkis, that pai fall reforme all enormities committit be þame in tyme bipast, and keip gude rewle in tyme cumming, and be obedient to þe Lawis, quhen pai falbe callit vpoun: AND all vtheris not findand þe said fouertie, within þe said space, we fall persew to þe deid with ffyre, sward, and all vther kynd of hostilitie, and expone⁶ þame, and all ping in pair possessioun, in pray to þe men of weir, as oppin and knawin inymeis to God, THE KING oure fouerane, and this Commoun-weill, without fauour, assurance, or freindschip, Renunceand all kyndnes, Bandis, promiseissis, assurances, and conditionis, þat we or ony of ws hes enterit in with þame, in ony tyme bigane, befoir þe dait heiroy, as we will anfuer to God, and vpoun our dewitie and allegiance to our fouerane lord his authoritie, and Regent foirfaid. AND in caise we failzie in ony pairt of þe premissis, or revelis not þe contravenaris of þis BAND, gif we knaw þame, we ar content to be pvneist pairfoir, according to THE GENERAL BAND, and panis contenit pairin. AS ALSUA, in caise in þe resistence or persute of ony of þe said Thevis, it salhappin ony of þame to be slane and brint, or ony of ws and our freindis to be harmit be þame, we fall euir esteime þe qwerrell and deidlie Feid equall to ws all, and fall neuir aggré with þe same Thevis, bot togidder, with ane consent and avyse: And in þe menetye fall tak afauld, trew, and plane pairt, ilk ane with vther, and specialie, fall assist THE LARD OF BUKCLEWCH, and vtheris LARDIS maist ewest⁷ to þe saidis Thevis, at all occasionis convenient. THIS our present BAND quhill þe first day of August nixtocum in full effect and force inviolablie to endure, to þe effect a perpetuale

¹ Sincerely; heartily; literally, *one-foldly*, without duplicity. Even to this day, *two-fald*, *two-faced*, &c. are employed to denote *double* or deceitful persons. ² Hinder. ³ Flocks of sheep, or cattle. ⁴ Such persons. ⁵ Cautioners. ⁶ Expose; give them up. ⁷ Nearest in point of local situation. It must be confessed, that this very remarkable Document gives rather an unfavourable view of the state of the *Borders* at the commencement of the reign of King James VI.; but reference to other 'Bands' and State Papers, which are faithfully conveyed to the public in the works of *Sir Walter Scott*, *Redpath's Border History*, and similar sources of information, prove the picture to be correct and unexaggerated. The influence of THE KING and his Lieutenants was but small, when opposed by the more powerful Barons; who could, in an incredibly short space of time, by means of their signal-fires, &c. alarm the country, and gather a prodigious force, with which they could easily overwhelm the royal troops. The usual policy of the Crown, therefore, was to appoint, as WARDENS OF THE MARCHES, the most stirring spirits of the time; who, vain of their 'brief authority,' were cajoled into the measures of the King and Council, and thus preserved 'guid rewle' on the Border. The private Feuds of the several Clans were also turned by the Government to good account; and by means of such 'Bands' as the present, the more unruly tribes were kept in check.

and perfyte ordour anent pe repreffing of pe saidis Thevis may be takin in pe menetye. IN WITNES QUHAIROF, we haif fubfcrvuit pe famyn with our handis, as followis, AT KELSO, pe fext day of Aprile, the 3eir of God I^m.V^c. three fcoir nyne 3eris.

S^r NICHOLAS RUTHERFURD of Hundoley, ANDRO KER.

ALEX^r L. HOME.¹

knyt.

GILBERT KER of Prinsydlouch.

WALTER KER of Cesfurd.

JHONE RUTHERFURD of Hunthill.

JOHNE EDMESTOUNE of yat Ilk, knyt.

BUKCLEWTH, knyt.

JHONE MOW of yt Ilk.

WILLIAME DOWGLAS of Cavers.

THOMAS KER of Fernhirst.

RICHARD RUTHERFURD, Provest of Jedbur^t.

JHONE HALDANE.

WILLIAME KER.

JAMES SCOTT, Baillie of Selkirk.

THOMAS TRUMBUEL of Bederowll.

PATRIK MURRAY of Faulahill.

JAMES GLEDSTANES of Coklaw.

RICHART RUTHERFURD of Edzerstone.

WALTER KER of Dolphiustone.

WATT SCOTT in Beilhauch.

ALEXANDER COKBURN.

ANDW.

WATT SCOTT of Tuschelaw.

ROBERT SCOT off Edilstane.

ANDRO KER of ffa . . .

HECTOR TURNBULL, Tutor of Mynto.

THOMAS MAKDOWELL.

T. CRANSTOUNE of yt Ilk.

CUTHBERT CRANSTOUN of Thirlstanemanis.

THOMAS KER of Nether Howdane.

ROBERT SCOTT, Baillie of Hawyke.

Sheep-Stealing—Common Theft and Reset of Theft.

Jun. 21.—JOK SCOTT, alias callit *Jok the Sukler*, sone to Thome Scott in Nether Braidlie.

Dilaitit of airt and pairt of the thiftious Steilling and away-taking fra Adame Almoufe, ane of the Laird of Chisholmes tennentis, furth of that pairt of the landis of Chisholme callit Mouflie, occupyit be the said Adame, ffoure fcheip pertening to him; committit in the moneth of October, 1612. ITEM, off tua fcheip, viz. ane 3ow² and ane hog,³ pertening to George Scott, callit of Deringftoun, furth of his landis of Castell-hill; in the moneth of Februar, 1613. ITEM, off ane blak 3ow, pertening to Rowie Scott, callit *Rowie of Huttikill*, furth of the Lyn befyde Eilrig; at Mertimes, 1614. ITEM, off fevin 3ow fcheip, pertening to James Rowie in Raeburne, ffurth of the landis of Raeburne, in Eskdaillmure; in the moneth of October, 1613 yeiris. ITEM, ffor cownone Thift, and cownone Reffet of Thift.

PERSEWARIS, Rowie Batie, callit James Rowie; Rowie Scott, in Vtterfyde; Walter Scott, his sone; informeris to his Maieftis Aduocat: Sir Williame Oliphant of Newtoun, knyt.

PRELOCUTOR in defence, Mr Vmphra Blindschellis, Aduocat.

The pannell denyis the haill poyntis of Thift contenit in his Dittay.

ASSISA.

Frances Airmestrang, callit of Andro Airmestrang of the Kirk-	Walter Gledstanes of Quhytelaw,
Kynmonthe, ⁴ toun,	Robert Wauch of Hoip,
Williame Airmestrang, his sone, Williame Airmestrang in Nether	Robert Scott in Schellifwoid,
in Gryftaill, Wrae,	Robert Airmestrang, callit <i>Rattas</i> ,
Alexander Armeftang in Wallis, George Langlandis of that Ilk,	Williame Airmestrang, callit
Johnne Ellote of Fallin-afche, Lancie Airmestrang in Quhit-	<i>Bald</i> , ⁵
Thomas Airmestrang in Gingillis, hauch,	Hectour Trumbill of Clarielaw.

VERDICT. The Affyse, having reffonit and voittit vpone the pointis of the

¹ The two principal columns contain autograph subscriptions, the third is all written in the same hand.

² Ewe.

³ A year-old sheep.

⁴ A descendant of *Kinmont Will*, famous in History and

Border Ballad.

⁵ *Bauld*, bold; intrepid. Bald-headed was uniformly written and pronounced *beld*.

Dittay, and being ryplie and at lenth advyset thairwith, togidder with dyuerse Depositiones producet be our fouerane lordis Aduocat, for verificatioun of the said *Jok Scott* his giltines of the saidis crymes; as also, vpone confideratioun had be thame to the fweiring of thais tua pointis of Dittay, fuorne in their presens be the saidis thre perfewaris; thay all, in ane voce, be the mouth of the said George Langlandis of that Ilk, chancellor, ffand, pronuncet, and declairit the said *Jok Scott*, callit *the Suckler*, to be ffylet, culpable, and convict of airt and pairt of the haill poyntis of Thift aboue specifeit; and of cownone Theft, and Reffet of Thift.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and vpone ane gibbet thair set vp, to be Hangit quhill he be deid: And all his guidis to be escheit, &c.

Egyptians or Gipsies contemptuously repairing and abiding within the Realm.

[THE following is one of the instances of the persecution of the once formidable race of GIPSIES, whose numbers were so considerable, as to excite the legislature to make various enactments for their banishment and extirpation. Notice of this pursuit has been preserved in *the Denmylne MSS.* Adv. Library, among various Minutes of the Proceedings of the Privy Council of Scotland, in the following brief memorandum. August 28, 1616. “ANENT that mater of EGIPTIANIS, now lyand in *the Tolbuith of Edinburgh*, thay war only convict for contraveining the Act of Parliament, in not depairting furth of the Kingdome; and no vther cryme was layed to thair charge, and no cryme is knawin whairvpone thay may be challengit. *The Counsell*, according to HIS MA^{TIES} direction, hes gewin Warrant for staying the pronouncing of Dome, till HIS MA^{TIES} farder pleasour be knawin.”

The Editor has found no other trace of the fate of these unhappy creatures; but it is hoped that the King contented himself with ordering their banishment from the country, under the usual certification.]

Jul. 19.—JOHNNE FAA, Egipciane¹; James Faa, his sone; Moyfes Bailzie, Egipciane; and Helene Broun, spous to Williame Bailzie, Egipciane.

Dilaitit of contravening of the Act of Parliament, maid in anno 1609 yeiris, in thair contemptuous repairing to this cuntrie, being repoute and haldin to be Egipcianis, and abiding thairintill, nochtwithstanding thairrof, &c. viz.

DITTAY against Johnne Faa, &c.

FORSAMEKILL AS, be Act of Parliament, haldin at Edinburgh, vpone the xxiiij day of Junij, I^m.Vj^c. and nyne zeiris, it is expresse provydit, statute, and ordanit, that all Vagabundis, Soirneris, and cownone Thevis, cownonlie callit EGIPTIANIS, sould depairt furth of þe kingdome, and remane perpetuallie furth pairrof; and nevir to haif returnet agane within the samyn, nor be fund pairintill, eftir þe first day of August paireftir, in the foirsaid zeir of God I^m.Vj^c. and nyne zeiris, vnder the pane of deid; and that it sould be liefum to all his Maiesteis

¹ See Jul. 31, 1611.

guid fubiectis, or ony ane of thame, to caus tak, apprehend, impriffone, and execute to death, all maner of Egiptianis, alfweill men as wemen, as cowmoun, notorious, and condampned Thevis; only, to be tryit be ane Affyse that thai ar callit, knawin, repete, and haldin Egiptianis: As the said Act of Parliament at lenth proportis. NOCHTHELES, it is of verritie, that the foirfaidis perfones, being Egiptianis, sua callit, knawin, repete, and haldin, in contempt of þe said Law and Act of Parliament, as Vagabundis, hes lurkit and remanit within this kingdome, sen þe making and publicatioun of the said Act, and nawayis hes past away furth pairof: At þe leift, aganis þe tennour of þe said Act, hes, sen þe said first day of Auguft, 1609 3eiris, repairit within this cuntrie, and ar tane and apprehendit as Vagabundis, and maisterles lymmeris¹ and thevis, reput and haldin, knawin and callit to be Egiptianis; quhairin thay and ilk ane of thame hes contravenit þe tennour of þe said Act of Parliament, and incurrit þe panes and pwneschment mentionet pairintill; quhilk aucht and fould be inflictit vpone thame, with all rigour, to þe example of vþeris of þair race and vnhappie Companie to eschew þe lyk heireftir.

PERSEWER, Sir Williame Oliphant, kny^t. PRELOCUTOR in defence, Mr Thomas Wilfoun, Aduocat.

IT is allegit be the pannell and thair prelocutour, that the Dittay is nawayis relevant to pas to ane Affyse, in respect it is nocht subfumet thairintill, that the perfones dilaitit was within the cuntrie, the tyme of the making and the publicatioun of the said Act of Parliament, quhilk is the grund of this perfute; nather yit is the pannell tane and apprehendit for ony Thift, Soirning, or Oppressioun, nor accuset thairfoir: Off all quhilkis crymes, thay ar willing to byde ane tryell: And thairfoir, the Dittay, as it is set doun aganis the pannell, can nocht pas to ane Affyse.—It is anfuert be my lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay and Act of Parliament.

THE Justice Repellis the allegiance; and Ordanis the pannell to pas to ane Affyse.

VERDICT. The Affyse, be the mouth of Thomas Creichtoun, mercheand in Edinburgh, chancellor, ffand, pronuncet, and declairit the saidis *Johnne Faa*, *James Faa*, his sone, *Moyfes Bailzie* and *Helene Broun*, all Vagabundis, and repete and haldin to be Egiptianis, to be ffylet, culpable, and convict of contravening the tennour of the said Act of Parliament.

THE Justice Continewit the prounceatioun of Dome vpone the perfones foirfaidis, quhill he be advyset with the Lordis of Secreit Counfall: And ordanit thame to be returnit to waird, to the Tolbuth of Edinburgh, in the meyne tyme.

Jul. 24.—SENTENCE. The Justice, in respect na cautioun could be ffand

¹ In our old Laws, this term was always applied to denote a worthless scoundrel, a professed thief, or *reiver*. At present it is applied solely to females of loose character.

be thame, for thair departour furth of his Maiesteis dominionis, and that thai fould never returne agane within the samyn during thair lyftymes, ilk ane of thame vnder the pane of ane thowseand merkis money; accoirding to ane Ordinance of the Lordis of Secreit Counfall, direct for that effect, vnder my Lord Chancelleris subscriptioun, daitit the xxiiij day of Julij instant; be the mouth of Johnne Dow, dempster of Court, Ordanit the saidis Johnne Faa, James Faa, his sone, Moyfes Bailzie, and Helene Broun, Egiptianis, and sa reput and haldin, tane and apprehendit, to be tane to the Burrow-Mure of Edinburgh, and thair to be HANGIT quhill thay be deid; and all thair moveabill guidis to be escheit, &c.

Quhilk was pronuncet for Dome; and that, conforme to the Ordinance of the Lordis of Secreit Counfell, of the dait above expremitt.

Slaughter.

Jul. 31.—ALEXANDER DUMBAR of Kilboyak, and others.¹

Dilaitit for the Slauchter of vmq^{le} Alexander Dumbar of Waftfield.

PERSEWARIS, James and Thomas Dumbaris, as brether.

THE Justice, for cauffis moveing him, speciallie, that the pairties war vnder the termes of aggrement, Ordanit the dyet to Desert.

Usurping his Majesties Authority—Convocation of the Lieges—Murder under Colour of Law, &c.

[THE particulars of this very remarkable and keenly contested Case² are so fully narrated in the proceedings which follow, and in the various Histories of the *Family of Gordon and Sutherland*, that it is unnecessary for the Editor to add any thing farther. It only seems proper to give, in this place, the following notice from the MS. Collections of *Sir James Balfour*, preserved in the Library of the Faculty of Advocates; which, though only relating to the preliminary arrangements, forcibly shows the spirit with which such matters were conducted, even before the Supreme Criminal Tribunal of the kingdom, where the parties were connected with noble and powerful families.—August 28, 1616. ‘THIS day being appointit to THE LAIRD OF GEICHT, *Johnne Gordon, Sheref-depute of Aberdein*, and the rest of thair complices, for thair compeirance before the Justice and his deputis, in the Tolbuith of Edinburgh, to vnderly the lawis for the slaughter of vmq^{le} *Frances Hay*; the Sheref-depute, accompanied with sum Gentilmen of the name of *Gordon*, and vtheris, came to this burgh, with outwarde shew, and apperance to have presented himselff to his tryell; and by his Petition, gewin in this day to the *Counsell*, he craved Licence to sum Gentilmen of his name to accompany and assist him at the Bar: Which was grantit to sex perfones selected and maid choise of be himselff. *The Erle of Erroll* came lykwayes heir, for perfute of that mater, he haveing procurit ane Licence from the *Counsell*, convenit at *Aberdene*, for his cuming heir; with conditioun that he fould keip his lodging, and not come furth thairof, without the *Counsellis* Warrant. He, be Petition gewin in this day to the *Counsell*, cravit Licence that he might go to the bar, to assist the perfute of that mater; bot, in regaird he was excommunicat, it was not thought expedient that he fould go in perfone to the bar, becaus it was suspectit

¹ See Jul. 24, 1611. On Jan. 15, 1617, “Sir Williame Hairt, his Maiesteis Justice, Ordanis the dyet to desert.” Whereupon George Duff, writer, protests for relief of the cautioners, &c. ² See also two entries immediately following this; and especially, that of *George Gordon of Geicht*, Feb. 26, to June 27, 1617.

that the excommunication would be obiectit aganist him, to debar him from proces: And als, becaus HIS MATIES *Advocat* was pairtlie persewar in the Letteris, who wald prosecute that mater, als weill as if *the Erle* war present. The Court being fenfit, *the Justice, Justice Clerk*, with the haille memberis of the Court, and the pairteis persewaris being all present, and *the Sheref-depute* being constantlie looked for to compeir, he notwithstanding absentit him selff; and is thairfoir declairit fugitiue, and his cautioneris vnlawit.']

Aug. 28.—JOHNNE GORDOUN of Clubisgoule, Scherref-depute of Aberdene.¹

Dilatit ffor airt and pairt of the Vfurpatioun of our Souerane lordis royall power and authoritie, in the arrogant and presumptuous cuming, with convocation of ane grit number of his Maiesteis legis, vpone the xvij day of December I^m.V^c. and fyftene yeiris, to the duelling hous of *William Hay of Logyruif*; and without ony lauchfvll Warrant, authoritie, or Commiffioun, puting violent handis in the persone of vmq^{le} *Frances Hay, sone to vmq^{le} George Hay of Ardlethame*, bringing him perforce and aganis his will furth of the said hous, cayreing him with ane grit number of men in airmes to the burgh of Aberdene, as ane captiue and priffoner; committing him in priffone, within the ludgeing of *George Gordoun of Geicht*, ane of his principall takeris, callit "*the Bony Wyfes Inne*," in the Gallowgait of Aberdene, keiping and detening him in maist strait firmance thairintill, be the space of fourtie aucht houris; nocht suffering any man of his kyn or freindis to haif access to him, during all that tyme: Committit be the said *George Gordoun of Geicht, William Hay*, his sone in law, *Johnne* and *Alexander Gordones*, his brether, *James Baird* his seruand, and vtheris thair complices. Off the speciall causeing, sending, hounding out, airt, plane pairt-taking, counselling, devyseing, command, assistance and ratihabitoun of the said Johnne Gordoun Scherref depute of Aberdene, and quha, during the tyme of the said Frances imprissonement within the said Inne, resoirtit dyuerse tymes thairto with the said Laird of Geicht, to countenance and assist the vnlauchfull keiping and detentioun of the said vmq^{le} Frances thairintill: AND sicklyk, the said Johnne Gordoun of Clubbisgoule, pretendit Schereff depute of Abirdene, being giltie in his own conscience, befoir God, of parcialitie and preoccupyt opinioun, and knowing weill aneuch that the tyme of his priuilege, gif he ony had, was expyrit; notwithstanding thairof, to the heich offence of Almichtie God, contempt of our Souerane lordis princle power, and to the grit scandall of the Justice of this kingdome, ffor his presumptuous and arrogant vsurpatioun and assumeing to him selff, with ane evill conscience, of the place and office of the Criminall Judge, in presenting him selff in Judgement, and setting down thairintill as Judge, ffenceing of Court, and calling and accuseing befoir him of the said vmq^{le} *Frances Hay*, for the allegit Slauchter of vmq^{le} *Adame Gordoun*, brother germane to the said

¹ See Feb. 26, 1617, &c.

Laird of Geicht; and for nocht admitting and suffering prelocutouris to compeir and defend the said vmq^{le} Frances, the tyme of the said perfute; bot be the contrair, debarring *Mr Williame Barclay, Aduocat*, quha was reddie to compeir in his defence, and quha had mony guid and sufficient exceptiones to haif proponit, to haif stayit¹ his puting to the knowlege of ane Assyse, for the said allegit cryme; be sending of *George Leslie of Kincragie*, with ane commissioun to the said Mr Williame, dischargeing him, vpone the perrell of his lyfe, to compeir in the said Frances defence; and assuering him, gif he sa did, fra he war anes down the stair,² thair sould be tuentie quhingeris put intil him: And sua, for debarring of the said vmq^{le} Frances, and defrauding him of the benifeit of lauchfull defence, quhilk God and nature hes indifferentlie allowit vnto all men: AND for the maist partiall proceeding aganis the said vmq^{le} Frances, nochtwithstanding of the premisses, in putting him to the knowlege of ane Assyse of ane number of persones selectit and maid chose of be the said *Laird of Geicht*, persewar, and his freindis, and altogidder adictit to thair mynd and directioun; quha, accoirding thairto, convictit him of the said allegit Slauchter: AND for the partiall and wilfull pronunceing vpone the said convictioun, of the Dome and Sentence of daithe aganis the said vmq^{le} Frances, to loise his heid: AND for that effect, maist partiallie and vndeutifullie, aganis the office of ane Judge, delynering of the said Frances bak agane to the said *Laird of Geicht* and his complices, the pairtie persewaris, quha tuik him to thair awin privat prissone; and vpone the morne thairefter, caryeit him furth at ane bak zet, to ane hole betuix tua mottis,³ quhair thay crowned thair tragidie with so boutcherlie mangling and demaning⁴ the puir gentill-man, be geving to him sex feveral straikis vpone his schoulderis, heid, and nek, as the lyk hes nevir or feldome bene hard or sene: AND sa, vnder the pretext and cullour of law, and scandall of Justice, ffor the crewall and barbarus massacaring and slauchter of the said vmq^{le} Frances, be the said Johnne Gordoun, scheref-depute, his pretendit vsurpeing Judge; quha thairthrow in a heich degrie hes contempnit and abuset his Maiesteis royall name and authoritie, in making it a cloke and cover to the revenge of the perticuler querrell of him selff and his freindis. In maner specifeit and sett down in the criminall Letteris direct aganis him thairupoun.

THE Justice, be the mouth of Thomas Young,⁵ dempster of Court, Ordanit Adame Gordoun of Boighoill (as cautioner and fouertie for John Gordon's entry) to be vnlawet in the pane of ffyve hundreth merkis, for the nocht entrie: And that the said Johnne Gordoun fall be denuncet our fouerane lordis rebell, and put to his hienes horne; and all his moveabill guidis to be escheit, &c.

¹ Delayed; prevented. ² By the time he got down stairs. ³ To a hollow betwixt two moats or fosses; the ground being probably selected, or constructed, so as to prevent a rescue of the unhappy victim of their barbarity. ⁴ Using; treating. ⁵ Who appears in this office for the first time.

Murder under Colour of Law, &c.

Aug. 28.—GEORGE GORDOUN OF GEICHT,¹ Williame Hay, his sone in law; Johnne Alexander, Robert and Patrik Gordones, brether to the said Laird of Geicht; Johnne Gordoun of Clubisgoule, Scheref depute of Aberdene; Williame Gordoun in the Maynes of Geicht, fervand to the said Laird; Johnne Sinclair, brother to the Laird of Achannachie; Andro Nicolfoun, fervand to the said Williame Hay; Patrik Cantlie in Airdifferie, and Andro Mylne, ffalconer.

Dilaitit for the usurpatioun of our souerane lordis authoritie, &c.² at the instance of Mariorie Keith the relict of vmq^{le} *George Hay of Ardlethame*, as mother; George Hay, as brother to vmq^{le} Frances Hay, sone to the said vmq^{le} George Hay of Ardlethame; and of Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our souerane lord, for his hienes intreis. The said Mariorie, &c. producet the Letteris deulie execute and indorfate; vpone the production quhair of, the saidis perfewaris askit instrumentis, and protestit for releif of thair cautioneris.

Murder under Colour of Law, &c.

Aug. 28.—GEORGE GORDOUN OF GEICHT, and others above mentioned, and James Baird,³ in the Maynes of Geicht, fervand to the Laird of Geicht.

Sir William Oliphant of Newtoun, kny^t, producet his Maiesteis Letteris deulie execute and indorfate, raifit at his lordschipis instance, as Aduocat to his Maiestie, for his hienes intreis allanerlie.⁴

Forcible Abduction and Marriage of a Minor, without having obtained the lawful consent of his Guardians.

Nov. 8.—SIR PATRIK CHIRNESYDE OF EIST NISBET, Alexander Cranftoun of Burnecastell, Johnne Cranftoun, brother to Williame Lord Cranftoun, Williame Home of Hardeifmylne, and Williame Moffet, his fervand.

Dilaittit of violent Rape and Raveifching,⁵ taking, and detening of Adame Frenche of Thornydykis, ane young bairne scarce past xiiij zeiris of age, furth of the Toun of Hadingtoun; and thairfra transpoirting him to Rymmiltoun-law,

¹ See Feb. 26, 1617.

² As in the previous case.

³ This person is omitted (probably by a

clerical error) in the former case.

⁴ Alone; solely.

⁵ These terms, in the Ancient Criminal

Law of Scotland, as has been frequently noticed in this work, signify merely the act of carrying off by violence, or against the will of the party so abused. The term employed to denote RAPE, as now understood in Scotland and England, was 'FORCEING.' 'Rapt' and 'Raveifching' only inferred what is at present technically termed 'Forcible Abduction.' A stronger illustration of the meaning formerly attached to these phrases could hardly be adduced than the present Trial.

and thairfra, as ane captiue, to Eift Nisbet; and thairfra to Beruik, quhair, but (*without*) consent of Sir Johnne Home of North Beruik, Donatour to the Gift of his Waird and Mariage, he was mareit to Jean Chirnesfyde, dochter to the said Sir Patrik; committit in the moneth of November, 1615 3eiris.

PRELOCUTOURIS in defence, Mr Alexander Peiblis, Johnne Belfis, Mr Robert Fairlie, Aduocatis.

PRELOCUTOURIS in persute, Sir George Home of Manderstoun, Sir Williame Oliphant of Newtoun.

PERSEWARIS, Sir Williame Oliphant of Newtoun, kny^t, for his hienes intreis; Sir Johnne Home of North Beruik, kny^t, as Donatour to the Waird of the said Adame French mariage, for his intreis.

The Aduocat, with Sir Johnne Home of North Beruik, kny^t, as persewaris, produces the fummondis. Eftir reiding thairrof, the Aduocat produces, for Sir Johnne Home of North Beruik his entreis, the Gift of the said Waird and Mariage of Adame Frenche of Thornydykis.

The Pannell, befor farder proces, desyres my lord Justice to heir Adame French of Thornydykis, presentlie in Judgement, quha is the persone allegit ravischet and tane away, to mak his awin Declaratioun of the forme and maner thairrof; and thaireftir, thay fall cum to thair Defencis in the cause.—My lord Aduocat Disassentis to ony Declaratioun to be maid be the said Adame Frenche, in this matter; and desyres the pannell to cum to thair awin allegeances, quhy the fact lybellit sould nocht pas to ane Assyse.

THE Justice Ordanis the pannell to propone thair defenffis aganis the lybell and relevancie thairrof.

Adame Frenche of Thornydykis, being personallie present, disassentis fra this persute; and thairupoun askit instrumentis.

It is allegit be my lord Aduocat, that the disassenting of Adame Frenche sould nocht be respectit, becaus he is naither persewar nor defender in the caus; and the Aduocat, with the persewar, haifing sufficient entreis for the King, may persew.—It is ansuerit, that my Lord Aduocatis ansuer touching the persute, movet be his lordschip and Sir Johnne Home, nawayis can stay this young Gentilman to disassent thairfra, *sed valeat cum processu quantum valere potest*.

It is allegit be the pannell and thair prelocutouris, that Sir Johnne Home hes na intreis to persew this caus, being criminall; becaus his only intreis is as Donatour to the waird and marriage of Adame Frenche; quhilk Gift, *per se*, can geve him na intreis to persew criminallie, becaus, be the Gift of Waird, he hes nather intreis *in personam neque in rem*: *In personam*, becaus this young Gentilman, befor the intenting of this caus, was past fourtene yeiris compleit, and hes electit and chofin Curatouris to him, for administratioun of his persone: *In rem*, he has na intreis, becaus howbeit it may appeir be the Gift producet, that Sir Johnne Home is Donatour to the Waird of this young Gentilman, yet, *in rei veritate, res aliter se habet*, as Sir Johnne Home will nocht deny, and as fall be maid cleir to

the Judge ; in fa far as (at) the tyme of vmq^{le} Robert French deceis, father to this young Gentilman, haifing tua father-brether¹ on lyfe, viz., James and Johnne Frenches ; James haifing ane cair of the bairnes educatioun and standing of the hous, delt for the Gift of the Waird and Mariage, to the vtilitie of the bairne ; bot, becaus he was nocht hable to discharge that administratioun of the bairne as become him, in respect of dyuerse trubbillis and cummoris² he come vnto, he makis chose of the said (Sir) Johnne Home of North Beruik, as ane trustie freind to him and the bairne, borrowis his name to the said Gift, and insertis his name thairintill ; nocht that the said Sir Johnne sould rype³ ony commoditie thair of, bot vseing the said Sir Johnnes name, nocht being hable to discharge the office him selff. For cleiring⁴ of this, it is of verritie, that nochtwithstanding of the inserting of the said Sir Johnnes name in the Gift, the said vmq^{le} James French intromettit with the haill leving pertening to the said bairne, during his lyftyme, keipit the said bairne in his custodie, at leift was in the custodie of his guidfchir on the mother fyde,⁵ within the place of Hardiesmylne, and that but⁶ interruption, challenge, or questioun made be the said Sir Johnne, anent the custodie of the bairne, or vplifting of the maillis⁷ and deuteis of his leveing : For forder qualificatioun of this argument, it is lykwayis of verritie, that eftir the deceis of the said vmq^{le} James Frenche, vmq^{le} Johnne Frenche, younger brother to the said James, being servet and retouret air⁸ to the said vmq^{le} James his brother, nocht only intromettit with the said vmq^{le} James his leving, bot lykwayis with the haill rentis of the said bairnes leving, *Tutorio nomine*, the said vmq^{le} Johnne being servet and retouret Tutour to him ; quhairby it is cleir that this Gift of Waird of the said minor can gif the said Sir Johnne no intreis to persew this cause, his name being only borrowit to it, as said is. Lyk as, thair is actioun depending at the instance of the bairne and his Curatouris befoir the Lordis of Seffioun aganis the said Sir Johnne for his intromiffioun with the maillis and deuteis of his landis, and for transferring and translating of the Gift of the Waird in the persone of the minor, as tane to his awin behuif, and the said Sir Johnnes name only borrowit thairto. And sa, haifing nather entreis *in personam neque in rem minoris*, his Gift can geve him na intreis to persew this caus. *Secondlie*, albeit it war grantit, as it is nocht, that the Gift was tane to the behuif, utilitie, and proffeit of the said Sir Johnne, yet the Gift of the Waird can geve the said Sir Johnne na intereis to persew this caus, being ane Criminall persute, without the expres concurse, assistance, and ratihabitoun of the said minor him selff, aganis quhome the Rapt lybellit is allegit to be com-

¹ Paternal uncles.² Literally *cumbers*, encumbrances, difficulties, embarrassments ; but in this instance it denotes strife, feud, &c., as the word then denoted.³ Reap.⁴ Elucidating.⁵ Maternal grandfather.⁶ Without.⁷ Rents.⁸ Served and retoured heir.

mittit; quha nocht only refuiffis to concur and affist the faid Sir Johnne; bot, be the contrair, compeiris with the defenderis, and affistis thame; affirmeing all that was done be thame, to be lauchfullie done, and quhat was done to him was at his awin defyre, and be his awin speciall consent.

It is anfuerit, be my lord Aduocat, and the faid Sir Johnne Home, that the faid Sir Johnnes entreis is fufficientlie qualifeit and instructit for perfute of the actioun lybellit, feeing it is lybellit that he is Donatour to the Waird and marriage of Adame Frenche, aganis quhome the haill wrongis lybellit war committit, being our fouerane lordis frie lege; and that the custodie and keiping of minoris, quhais landis fallis in our fouerane lordis handis be reffone of Waird, properlie pertenis to the Donatour of the Waird and Mariage: Lyk as, it is expreflie qualifeit in the faid Summondis, that the faid minor was in the faid Sir Johnnes poffeffioun mony yeiris befor the tyme lybellit, furth of quhais poffeffioun it was nocht lauchfull to the defenderis nor nane of thame to mell¹ with him, in maner lybellit, nor tak him furth of his poffeffioun: Lyk as, complent being made of befor be the faid Sir Johnne, befor the Lordis of Secreit Counfell, aganis the speciall perfones his away-takeris, viz. Williame Home and Williame Moffet, the faid Sir Johnne was ffund to be ane pairtie compliner to call for exhibitoun of the faid bairne; in quhais favour ane fentence was gevin and pronuncet, ffind-ing and declairing that the faidis Williame Home and Williame Moffet had committit ane verrie grit offence and ane moft pernicious and wicket preparatiue and example, in trayning and taking away the faid Adame Frenche out of the faid Toun of Hadingtoun, quhair he was placet at the fcole be the faid Sir Johnne; in respect quhairof, the faid Sir Johnne hes indoutit rycht and intreis to perfew the actioun lybellit; and speciallie, to informe and concur with our fouerane lordis Aduocat, quha hes speciall entreis be him felff, in his hienes name, to perfew the crymes lybellit. As ffor the impertinent² difcourfe, that the richt of the Waird was tane to the behove of the bairne be the advyfe of vmq^{le} James and Johnne Frenches his father-brether, that alledgeance is nather releveant nor instructit; and fa, na respect aucht to be had thairto: And yit, to anfuer to the firft pairt, anent James intromiffioun, the allegeance is altogidder irrelevant; for albeit he had intromettit, that eftablifches na richt of the Waird in his perfone, bot the Donatour had fufficient intreis to perfew the intromitteris with the maillis and douteis of the Waird landis: And, to mak the matter mair manifest, James deceift within fyftene dayis efter Robert his brother: Lyk as, vmq^{le} Johnne was ane actuall feruand to the faid Sir Johnne, during his lyftyme, eftir the dait of the faid Gift. And as to the laft pairt of the fecund allegeance, beiring that the faid Adame French difaffentis fra the perfute, and concurris with the defenderis,

¹ O. Fr. *mesler*, to intermeddle; to interfere.

² Irrelevant; not pertinent.

affirmyng that all [that] was done to be done of his awin consent, it is anfuerit, as of befoir, that his disassenting fra the perfute can nocht preiudge ony of the perfewaris: And as to the last pairt of the said allegiance, quhilk appeiris to be proponit aganis the intreis, it is rather affirmatioun that the said Sir Johnne hes intreis nor¹ oppositioun aganis the samyn; and gif it fall pleis the pannell to propone it, as ane defense in the cause, thay fall haif ane direct anfuer; ffor, be the proponing of that allegiance, it is grantit that the Donatour hes intreis; and that he is Donatour, it is verifeit be the Gift producet: Bot to mak this matter cleir, it is anfuerit directlie, that ane cryme being committit aganis pairteis quha hes intreis, the Confessioun of the pairtie offendit can nevir tak away thair intreis, nather yit the Kingis intreis efter committing of the cryme, ffor, albeit wrang had bene done to ane maior,² and the maior wald renunce the actioun, that can nawayis preiudge the Kingis Maiesteis intreis, nor na vther pairtie quha is preiudget; as is cleir in the haill article of the Cod. L. vnica Codice *de Raptu Virginum*, et Lege *Raptores*, C. *de Episcopis et Clericis*: And to mak this matter the mair cleir, it is speciallie declairit be the Act of Parliament maid in October 1612, that the declaratioun of the persone ravischet fall nawayis preiudge the Kingis Maiestie of his intreis to perfew the committer of the cryme: And to cleir this matter forder, the said Adame Frenche, eftir his away-taking, be ane Letter, all writtin and subscryuit with his awin hand, grantit and confessit that he was tane away aganis his will and vndone; as the Letter heirwith producet beiris.

To the quhilkis it is anfuerit be the pannell, that the allegiances proponit be thame aganis the said Sir Johnne Homes intreis standis relevant, nochtwithstanding of my Lord Aduocattis anfuer; becaus the defendaris affirmes constantlie, that of the Law nor Practique of Scotland, the Donatour of the Waird or Mairiage of ony persone hes na actioun criminall competent to him for ony wrang done to the minor, without the concurse of the minor quha is offendit, bot that the Gift of the Waird inferis to the Donatour only ciuile actioun, *per se*: And howbeit the keiping of the minor during the Waird pertenis to the Donatour, yit gif the minor be past xiiij yeiris, *et sic sui juris*, divertis him self willinglie out of the companie of the Donatour, passis forwardis to the electioun of his curatouris, thair is na actioun competent of the law to the Donatour, for exhibitoun and delyvering to him of the minor. Lyk as, Williame Home being summoned befoir the Counsell, for exhibitoun of the said Adame Frenche, and being be Ordinance of the saidis Lordis, thaireftir, sequestrat in the handis and custodie of *James Archbischope of Glasgou*, vpone ane Supplicatioun gevin in be the said Adame him self to the saidis Lordis, the saidis Lordis, be thair Decreit, Ordanit the said Adame to be put to libertie to pas and repas at his plesour, nocht-

¹ Rather than the contrary argument.

² A person arrived at lawful age, or majority.

withstanding of the Gift of the Waird disponit to the said Sir Johnne Home, quhais entreis could be na impediment to stay the said Adames libertie: Lyk as, conforme to the said Decreit, being put to libertie, he frelie, volunterlie, and willinglie repairit to the Place of Eist Nisbet, quhairin he hes remanit senfyne, as to ane speciall freind; and, gif neid beis, the said Adame, be his awin Declaratioun, will declair his intentioun of passing to Eist Nisbet. And for instructing thair of, produces the bairnes grevis,¹ to be confiderit be my lord Justice, desyring the samyn to be red as ane speciall pairt of the proces. As to the Letter producet be my lord Aduocat, the said Adame denyis the same altogidder to be his hand writt, and thairfoir na respect fould be had thairto: Lyk as, the said Adame being personallie present, Judiciallie declairis he can nocht wryte; and this Letter producet be my Lord Aduocat was writtin by² his knowlege in *the Guidman of Manderstones* hous, the tyme of his sequestratioun; and in cace it war his hand writt, it could mak na faith in judgement, being direct be ane minor. As to the Act of Parliament producet, quhilk is in anno 1612, the alledgeance foundit thairupoun militatis nawayis in this eirand, nather is this perfute foundit vpone that Act of Parliament; and quhan as my lord Aduocat foundis a perfute thairupoun, it fall haif the awin anfuer.³ *Igitur, &c.*

The Aduocat, for him self, and for the pairtie, repeittis his former anfueris, with this additioun, that the minor being in the Donatouris possessioun of his Waird and Mariage, lyk as, he was be the space of fyve yeiris befor the Rapt lybellit, could nocht haif been tane out of his possessioun, in maner contenit in the Summondis; and the away-takeris of him aucht to be pwneift accoirding to the desyre of the Summondis. As to the impertinent discourse, that the Waird was tane to the behuif of the bairne, thair is nathing producet to verrifie the samyn; and albeit it war verifeit, it is altogidder irrelevant, in respect of the former anfuer; and speciallie, in respect that the Defenderis had na intreis, in maner lybellit, to haif mellit with the minor: And quhairas thair is mentioun maid of the electioun of his Curatouris, thair was na Curatouris chofin the tyme of the committing of the crymes lybellit, quhilk was done in November 1615, the Curatouris being alledget chofin in Julij thaireftir, 1616. And quhair mentioun is maid of the bairnes libertie and sequestratioun, that is nawayis pertinent to this purpois, in respect of the lybell. *Igitur, &c.*

It is allegit be the pannell, that the electioun of the Curatouris be Adame Frenche in July 1616, is sufficient, nochtwithstanding of his away-taking of befoir; and that be reffone that howbeit the Curatouris was nocht chofin befor

¹ Probably *grievances*. There is marked on the margin of the Record, 'Thir grevis tane vp and keipit be my lord Justice.' ² Without; beside; contrary to. ³ Its own, *i. e.* a special answer to the pursuit so founded.

the allegit Rapt, yit he was maior befor the allegit Rapt, past fourtene yeiris of age, &c. *Igitur*, &c.—It is anfuerit thairto be my lord Aduocat and the perfwar, that na respect aucht to be had, quhidder he was past xiiij yeiris of age the tyme of the committing of the crymes or nocht, quha being at that tyme in the custodie and keiping of the Donatour to the Waird, and na curatouris chofin to him, the defenderis had na intres to haif mellit with him, as is lybellit. And quhair it is allegit, that the Miffiue ufet and producet for the faid Adame, aucht nocht to be respectit, in respect of his minoritie; it is anfuerit, that the famyn aucht to be respectit, being all writtin and fufcryuit with his awin hand: And to convert that argument aganis the defenderis, na respect aucht to be had to his Declaratioun, nather be word or writ this day, in respect of his minoritie. As to the Testimoniall producet for his age, na respect aucht to be had thairto, for the reffones aboue writtin, fpeciallie, in respect he was baptizet the xij of November, 1601, and was tane away in November 1615, fua that it is nocht constant¹ thairby, quhidder he was past xiiij yeiris or nocht the tyme of the Rapt lybellit. *Igitur*, &c.

It is allegit for the Defenderis, that the Dittay is nawayis relevant to infer aganis thame ony criminall perfute, nather can thay pas to the knowlege of ane Inqueift thairfoir; becaus the fact contenit in the Dittay, it is *vel Raptus vel Plagium*: *Raptus*, of the Law, it is nocht; becaus *raptus et raptura* of the Law is only concerning Virginis, and nocht more. *Cap. de Raptu Virginum, toto titulo*:—Bot quhidder it be *vel Raptura vel Plagium*, yit the Dittay is nocht relevant, becaus *ad crimen Plagii vel Raptura, oportet accedat et interveniat vis et violentia*: *Oportet de jure ut deportatur de loco in locum, clandestinè, violenter*, and that his freindis and kinsmen be debarrit fra haifing accèss to him, quhairby he is depriyvet of the libertie of ane frie ledge: Bot fa it is, that nane of thir perticuleris, without the quhilkis the Dittay can nocht be relevant, is fet doun in this Dittay; ffor first, thair is no violence nor violent fact fet doun thairin; it is nocht lybellit that he was violentlie, quyetlie, and clandestanlie tranfpouirtit fra place to place; or that he was detenit, *quasi in carcere*; or that he was debarrit fra his freindis, or fra haifing accèss to his freindis, or thay to him; bot be the contrair, it is affirmet in the Dittay, that he frelie, volunterlie, and willinglie past with Williame Home, his mother-brother,² out of the Hous of Mr Williame Bowie, quhilk inferris a frie away-cuming, being with his mother-brother, and nerrest of his kyn, haifing na kyn of the father fyde knawin to him: And fa, the Dittay is altogidder irrelevant. As to that pairt of the Dittay, beiring that the remanent defenderis are airt and pairt thairof, thay can nocht pas to ane Affyse vpone that point of the Dittay; becaus, gif thair be nocht

¹ Clear; apparent.² Maternal uncle.

ane cryme committit be the principallis, nor a relevant cryme set down against thame, the perfonas can nocht be alledgit to be airt and pairt thair of; and albeit it war relevant for the principallis, it is nawayis relevant aganis the remanent perfonas, as airt and pairt; becaus airt and pairt, of the Law, is, *qui prodet vel auxilium vel consilium; auxilium, vel ante factum, vel in facto, vel post factum*: Thair is nather *auxilium* nor *consilium* relevantlie lybellit aganis thir defenderis, *neque ante factum, in facto, vel post factum*; ffor thair is nathing lybellit aganis thame, bot that he was first transpourtit to Rymmiltone-law, and thaireftir to Eift Nisbet; and that thaireftir he was mareit to Jeane Chirnesfyde, quhilk is na qualificatioun of violence *cum matrimonia sunt libera de jure*; and the mariage of ane minor, eftir his compleit age of xiiij yeiris, quha hes *consensum* of the Law, can nocht be comptit ony violent fact, becaus it proceidis of his awin propper fact; speciallie, feing the mariage proceidit vpone the Proclamatioun of his bands, publictly, in the parochie kirk, quhilk takis away the grund of the argument of violence vset aganis him. *Igitur, &c.*

It is anfuerit be the persewaris, for verifeing of thair Summondis, and haill memberis thair of, that the samyn is verrie relevantlie confauet, and aggreis with the Lawis and pratique of the realme of Scotland, Ciuile, and Commoun Law, and Lawis of all Nationis maist ciuile, Ingland and ffrance; and thir anfueris ar proponit be him to verifie all the memberis of the propositioun contenit in the Summondis, and to elyde¹ the exceptiones proponit be the pannell, baith for the principallis, and thais that ar callit for airt and pairt: And as to the first member of the propositioun, the persewaris alledges, that the samyn is sufficientlie verifeit be the haill article of the Cod. L. nono, Tit. 20. ad Legem Fabiam *de Plagiariis*; lyk as, be the Lawis and pratique of this realme, the taking of ony frie persone is capitall, and sumtyme thocht to be treffonable: It was fund to be capitall aganis *George Meldrum of Dumbreck*, for taking of *Mr Alexander Gibson*; lyk as, he was persewit and pwneist to the death thairfoir: *The Marquis of Huntly*, and *the Erles of Craufurd* and *Bothuell*, war persewit criminallie, for the taking of *vmq^{le} Thomas Maister of Glammes*, and put to the knowlege of ane Inqueist. As concerning the Ravischeing, that pairt is verifeit to be capitall, be the Act of Parliament maid in the dayis of King James the Fyft, of worthie memorie, in the moneth of Marche, 1540, cap. 118; and siclyk, be the foirnameit Act, in October, 1612; be the Ciuile Law, the same member anent the Ravischeing is capitale, toto Titulo et Lege vnica *de Raptu Virginum* et Lege *Raptores, Codice de Episcopis et Clericis*; And albeit the saidis Lawis chieflie makis mentioun of violence committit against Wemen, yit the Glofs and haill Jurisconsultis resolues, that the same lawis hes place quhair ane man is ravished:

¹ Cut off; redargue. Lat. *elidere*.

And albeit na violence war lybellit, yit thair is sufficient circumstances lybellit to infer the violence; beiring directlie, that quhan the said *Adame Frenche* defyret to be bak agane to Hadingtoun, the principall perſones defenderis, at the leiſt *Williame Home*, *Alexander Cranſtoun of Morieſtoun*, and *Williame Moffet*, of the ſpeciall cauſing, counſalling, and devyſeing of the haill perſones contenit in the Summondis, had the ſaid Adame in thair power, and tauld to him planelie that he ſould nocht returne, bot that it behovet him to go to Eiſt Niſbet, to marie the Lairdis dochter; and this was done be thame, eftir that the ſaid Adame was tane and apprehendit be the ſaid *Williame Home*, (and) was craftilie movet, perſuaidit, and intyſet to pas with thame furth of Hadingtoun, of intention to haif viſſeit *Margaret Haitlie*, his guidame, and fiſteris, albeit that was nocht thair intention; bot that followit quhilk thay proponit to thame ſelffis frome the begynning, to keip him in thair handis quhill he war mareit with *Eiſt Niſbetis* dochter: Lyk as, he was quyetlie and ſecreitle convoyit and cayreit fra Hadingtoun to Rymmiltone-law, in the Merſe, than the duelling-hous of the ſaid Alexander Cranſtoun of Morieſtoun, and thairfra, be the ſaid Williame Home, Alexander Cranſtoun, Johnne Cranſtoun, and Williame Moffet, to the Place of Eiſt Niſbet; and thairfra, furth of the realme of Scotland, to the Toun of Beruik in Inghland, quhair he was ſecreitle mareit *clandestinè*: Quhilk anſuer is ſufficient to infer the concluſioun of the lybell, in reſpect of the circumſtances contenit in the Dittay: And yit to mak the Dittay relevant, of the Law, albeit thair war na violence lybellit, quhan pairteis are ſeducet and intyſet, the cryme remanis capitall, as is contenit in the lybell; and alleges Godfredus, ad dictam Legem *Raptores*, et Bald ibidem; Farinacius de *Delictis carnis*, queſt. 146, Tit. 16, numero 40; Cheſſa. de *conſuetudine Burgund.* Rub. 1, pag. 57; Salicotus ad dictam Legem vnica, Cod. de *Raptu Virginum*, quhais woirdis ar thir ſchortlie, ‘*quod perſuaſio dolosa, in talibus, plus eſt quam violenta tractio.*’ Forder, be ane expreſſe Statute maide be Henrie the Third of France, it is ordanit, that quhoſoeur fall be fund to haif ſubornet or intyſit ane chyld, minor, and within xxv yeiris of age, without conſent of thair parentis, or vtheris in quhais cuſtodie thay ar, ſalbe pwneift to the daithe, without ony pardoun. This Law was ſet doun, *per expreſſum*, in the grit Code of the ſaid King Henrie, Lib. 60, Tit. 2°, Stat. 8°. Lyk as, in the ſevint buik of Papon. de *crimine Raptus*, it is expreſſie ffund and declairit, that ane Woman, for ſeduceing or intyſeing of ane young man to marie hir dochter *clandestinè*, was condampnit to the daithe. Lyk as, be the Lawis of Inghland, this cryme is pwneift with fyve yeiris imprifſonement, and ane grit fyne at the Princes will; and this Law was ſet doun quhair ony perſone is raviſchet fra thair parentis, tutouris, or guardianis; And of this Law mentioun is maid in the 555 leiſ of the Regiſtar of the Lawis

of England. Julius Clarus, § *Raptus*, num. 6, ait, ‘*Raptum viri etiam puniri pena Raptus, ac si Virgo rapta esset.*’ Be the Lawis of the Maieftie of Scotland, *Quon. Attach. cap. 95, de Raptu heredis Maritagium debentis, et ejus pena, &c.* Be the felf fame Law of the Maieftie, in findrie pairtis, Ravifching of Men or Wemen, whois Mariage pertenis to the Prince, is appointit to be criminallie perfewit befor the Juftice. And laft, Ravifcheing is fa odious ane cryme in Scotland, that the famyn is exceptit furth of Remiffiones, as ane cryme maift haynous and detestable.—In refpect of the quhilkis alledgeances, proponit for verificatioun of the propofitioun contenit in the Summondis, the Dittay is relevant aganis the haill perfones on pannell. And that pairt of the lybell, ‘airt and pairt,’ is verrie relevant aganis all perfones, and speciallie appointit to be lybellit be Act of Parliament; and the Law is verrie expres in that, that all the perfones that concurris and affiftis the fact quhilk is capitall, ar all culpable as the committeris thairof: Bot in this caice, it is lybellit expreflie, that Williame Home and William Moffet intyfet and tranet¹ the faid Adame furth of Hadingtoun, and convoyit him to Rymmiltounelaw, quhair he was reffaut be the faid Alexander Cranftoun; quhilk Alexander and Johnne Cranftoun convoyit him thairfra to Eift Nifbet, and thairfra altogidder to Beruik, quhan he was mareit *clandestinè*, as faid is, and reffaut be the faid *Laird of Eift Nifbet*, and keipit be him quhill he mareit with his dochter, purpoiflie done to preiudge the faid Sir Johnne Home of the double availl of his Mariage; quhilk makis the haill pannell nocht only to be affifteris of the fact, bot airt and pairt, and direct doaris thairof. And to verifie that he was feducet, intyfet, and cayreit away aganis his will, repeittis the foirfaid Letter, all writtin and fubfcriuit with his awin hand; and the Decreit gevin to the Secreit Counfall, finding ane wrang done, be the away-taking of him. And thir argumentis ar proponit, nocht only to verifie the propofitioun of the Summondis, bot alfo to elyde the exceptiones proponit be the perfones on pannell aganis the relevancy of the Dittay.

To the quhilk it is ANSWERIT be the perfones on pannell and thair prelocutouris, that the pannellis allegeance proponit aganis the irrelevancie of the Dittay ftandis relevant, nochtwithftanding of all the arguments proponit be my lord Aduocat aganis the famyn: ffor, as to the Lawis Ciuile, French Lawis, Inglis (Lawis, and) Municipall Lawis of this realme, thay ar verrie pertinentlie citit be my lord Aduocat, for confirmatioun of the propofitioun of the Dittay, and to infer the conclufioun thairof, gif the fubfumptioun war relevant, quhilk is *factum*; ffor it is nocht contravertit with² my lord Advocat, that *Raptus Virginis*, Ravifcheing of wemen, *vel crimen Plagij*, as the taking of his Maiefteis frie lege, is capi-

¹ Trained; led away craftily, or by stratagem.
doctrin laid down by the Lord Advocate.

² It is not controverted, even according to the

tall of the Law, and may be criminallie perfewit at his Maiesteis Aduocattis instance; bot the questioun in this judgement¹ is, quhidder gif this pannell haif committit ony of thir crymes, at the leift quhidder the samyn be relevantlie lybellit to infer the cryme cravet; ffor his lordschip will nocht deny, that of the Law, to aither of thir crymes thair aucht to intervene *vim et violentiam*, and the remanent circumstances allegit be me ofbefoir, viz. *Abductio per violentiam*, *Deportatio de loco in locum clandestine*, *Seclusio parentum*, quhairby nather of thame fould haif access to the pairtie ravischet, and detenit, and withaldin fra thair kyn and freindis, *quasi et tanquam in carcere*; sua that without thir circumstances concur in this caice, it can nather be *Raptus* nor *Plagium*; and consequentlie, thay can nocht pas to the knowlege of ane Assyse thairfoir. As to the instances citet be my lord Aduocat, betuix *Dumbrek* and *Mr Alex Gibsone*, nixt betuix vmq^{le} *Thomas Maister of Glammis* and *the Erles of Huntlie, Craufurd*, and *Bothuell*, thay militat nathing in this caice; ffor as to *Dumbrek*, he expresse committit *crimen Plagii*, in taking of the Kingis Maiesteis frie lege, quyetlie and clandestinlie, by² all his freindis knowlege, be plane violence and force, being accompaneit with ten or tuelf persones in hosteill and weirfair maner, with wappones prohibeit to be borne or worne, transpoirting of him from place to place vnder nycht, debarring his freindis to haif acces to him, and be carieing him to the Castell of Harbottill, in Ingland; sua that the pwneischment inflictit vpone him was dew, accoirding³ to the fact. As to the secund instance, anent *the Maister of Glames*, it lykwayis far les militatis in this caice, ffor it is not-tour, as my lord Justice, his Assessoris,⁴ and my lord Aduocat knawis rycht weill, that *the Erles of Huntlie, Craufurd*, and *Bothuell*, being banded against the Kingis Maiesteis authoritie, deprehendit *the said Maister of Glammis*, in the Kingis Maiesteis high way, chaiffit him to the Hous of Kirkhill, and pat ffyre thairto, quhilk inferris *crimen Plagij* of the Law, and ane gritter puneischment: And as to that part of the Dittay, beiring that the said Adame was intyset and seducet, that is nawayis relevant to infer ane cryme, ffor ffraud is nocht capitale, of⁵ the Municipall Law of this realme, nor yit accoirding to⁶ the practique of the same: And as to the Lawis citet to infer the samyn to be *crimen capitale*, and speciallie the Law of the Maiestie, *Quon. Attach.*, I oppone⁷ the daylie custome of this Judgement, the Municipall Law of this realme, and speciallie the Act of Parliament in anno 1612, ffor it is expresse set down in the Dittay, that the said Adame Frenche come with the said Williame Home out of the said Mr Williame Boweis hous, the samyn can infer na Rapt; nocht only

¹ Court; tribunal. ² Without; against; beside. ³ Corresponding; conformable. ⁴ It was the uniform custom, in all cases of difficulty and interest, for several Members of the Privy Council to sit in judgment with the Justice, as Assessors. Their names are only occasionally inserted in the Record in remarkable Cases. ⁵ According to. ⁶ Corresponding with. ⁷ Oppose.

for the argumentis, that he was, *sui juris*, past the age of xiiij yeiris, bot his being in companie with his kynsmen, can nocht infer ane Rapt, speciallie, quhair he is nocht detenit *per vim nec violentiam* fra the presens of his freindis. And quhair as, my lord Aduocat affirmes the Mariage to haif bene clandestine, and sa, nocht lauchfull, the contrair is affirmit—it was nocht clandestine; becaus thair preceidit Proclamatioun of Bandis,¹ the mariage was maid publictly in the paroche Kirk, within the town quhair the parentis of the Gentilwoman had residence, off the speciall consent and assent of the said Adame; the said Williame Home being present at the time of the geving of his consent, and in companie with him, being his mother-brother. And sua, thair being nathing qualifeit in the subsumptioun of the Dittay to infer ony violence, the pannell can nocht pas to the knowlege of ane Assyse thairfoir: ffor as to thais wordis set down in the Dittay, that thai wald nocht suffer him to pas bak agane, thair is nathing producet to instruct that point of the Dittay, nor na pairt thairof, tuicheing the allegit fact; ffor, be the Cowmone Law and diuerse Doctouris, sic as Julius Clarus, Baldus, Hostiensis, and remanent Doctouris treittand *de crimine Plagij vel Raptu Virginis*, thay conclud the samyn nawayis to be ane cryme quhairvpone ony pairtie may be accuset criminallie, except thair concur violence and violent deidis to that effect. This is cleir in the Cowmone Law, Digest. *de Incendio, Rapina, et Naufragio*, &c.; sua that the haill Doctouris and Cowmone Law concludis, that *nunquam sit Raptus sine vi et violentia. Igitur, &c.*

The Persewaris repeatit thair former ansueris, with the haill argumentis proponit for verificatioun of the propositioun of the Summondis: and lykwayis repeatit the Summondis, and haill pairtis thairof, quhilkis ar relevantlie lybellit, as ane direct ansuer to the last argument proponit. And as to the consent of the said Adame, ansueris as ofbefoir, that ane fact capitall being committit, the pairtie aganis quhome the samyn is done may mak na² confessioun nor declaratioun to the prejudice ather of the Kingis Maiestie, or the pairtie interesse.³ *Igitur, &c.*—To the quhilk it is ansuerit, that the pannell declairis, that as yet thai haif proponit na alledgeance vpone ony contrair Confessioun of the pairtie; bot gif ony sic allegeances he hes to propone, referues the samyn to be proponit *suo loco*: And thairupoun askit instrumentis.

THE JUSTICE continewis Interlocutour vpone the allegeances foirsaidis, and ansueris maid thairto, to the morne, the nynt of November instant. The pairteis and Assyse wairnit, *apud Acta*: And Ordanet the pannell to find Cautioun for thair compeirance the morne, to the effect foirsaid.

The Laird of Eist Nisbet elder, become fouertie for the entrie of Alexander Cranstoun of Burnecastell, vnder the panes contenit in the Actis of Parliament.

¹ Bans.² Is not entitled to make any confession, &c.³ Interested.

—The said Alexander become cautionne for the entrie of Eist Nisbet, Johnne Cranstoun, Williame Home, and Williame Moffet, the morne, vnder the panes, &c.

Nov. 9.—THE JUSTICE, befor Interloquitour to be pronouncet be him in the matter, Ordanit the perſones on pannell, and fiklyk the said *Sir Johnne Home of North Beruik, knyght*, perſewar, to find caution for keiping of his Maieſteis peace, in nocht trubilling and moleſting of vtheris,¹ by way of deid, in thair bodeyis, landis, or guidis, vtherwayis nor by ordour of Law and juſtice, under the panes following, viz. The said *Laird of Eist Nisbet*, the said *Sir Johnne Home* of North Beruik, and *Alexander Cranstoun*, ilk ane of thame vnder the pane of fyve thouſeand merkis; and the ſaidis *Johnne Cranstoun* and *Williame Home* vnder the pane of I^m (1000) merkis, for ather² of thame.

James Fauſyde, younger of that Ilk, become plege and ſouertie for Sir Patrik Chirneſyde; Johnne, Maifter of Cranſtoun, for Alex^r Cranſtoun; Alexander Chirneſyde, younger of Eist Nisbet, for Johnne Cranſtoun; and the ſaid Alexander Cranſtoun of Burne Caſtell, for Williame Home, that thai ſall keip his Maieſteis peace, and that Sir Johnne Home of North Beruik, kny^t, ſall be harmles and ſkaithles of thame in his body, landis, poſſeſſiones, and guidis, and onnawayis³ ſall be moleſtit nor trubillit be thame or ony of thame thairintill, nor be na vtheris of thair cauſing, ſending, hounding out, command, reſſet, aſſiſtance, or ratihabitoun, quhome thay may ſtop or lat,⁴ directlie nor indirectlie, vtherwayis nor be ordour of Law and Juſtice, &c.

Sir George Home of Manderſtoun, Johnne Home, younger of Aytoun, and Daud Home of Wedderburne, younger, become pleges and ſouerteis, coniunctlie and ſeuerallie, for Sir Johnne Home of Northberuik, that Sir Patrik Chirneſyde, &c. ſall be harmeles and ſkaithles, &c.⁵

(Nov. 20.)—MY LORD ADUOCAT, befor Interloquitour, declairis he will nocht inſiſt any forder at this preſent, in perſute of the perſones on pannell, for the crymes lybellit: And in reſpect of the haynouſnes of the fact, and evill preparatiue⁶ and conſequence quhilk may follow, deſyres that caution may be tane of the defenderis for thair entrie, vpone a fyftene dayis wairning, to abyde tryell for the ſamyn, &c.—It is allegit be the pannell and thair prelocutouris, that in reſpect of the allegeances proponit, alſweill dilatour as peremptour in this cauſe, and of my Lord Aduocattis anſueris maid thairto, quhilk lyis at Interloquitour, his lordſchip, as perſewer, can nocht be hard to reſeill⁷ fra this perſute; nather can the pannell be aſtricted to find caution, ſeing thay ar willing, vpoun my lord Juſtice Interlocutour, to defend thame ſelffis, as accoirdis of the Law: And in all humilitie abydis his lordſchipis Interloquitour thairupone.

¹ Each other. ² Each. ³ In nowiſe. ⁴ Hinder. ⁵ In the ſame terms as above.
⁶ Precedent; example. ⁷ Reſile; draw back.

Mr Alex^r Peiblis, as prelocutour for Adame Frenche, personallie present, produces ane Supplicatioun to my lord Justice, for his lordschipis informatioun in this caus, anent the said Adames passing away ffurth of Hadingtoun with the pannell, and that the samyn was of his awin frie will and consent; and desyret the samyn to be red, and to remane in proces; and takis instrumentis vpone the production thair of.—It is allegit be my lord Aduocat, that eftir his Declaratioun aboue writtin, that he desistis fra this persute, the persones on pannell, and far les the said Adame Frenche, quha is nawayis convenit, ather as persewar or defender in this matter, can be sufferit to produce ony informatioun or vther allegiance in this cause; nather aucht my lord Justice to admit the production thair of, eftir the Declaratour foirsaid.

The pannell desyret the Supplicatioun foirsaid to be red, befor my Lord Justice geve any Interloquitour, quhidder my lord Aduocat may refeill *pure et simpliciter, vel pro loco et tempore*.—The Supplicatioun gevin vp agane to the pannell, at command of my lord Justice.

THE JUSTICE findis that my lord Aduocat may verrie weill desist fra this persute and tak vp his proces, seing he is persewar of the caus; and that, notwithstanding of the alledgeance maid be the pannell in the contrair.

The pannell takis instrumentis of the production of the former Supplicatioun be Adame Frenche, and that the said Adame Frenche is personallie present, reddie to declair, baith be woird and writ, that he past away with his Mother-brother of his awin frie will and consent.—My lord Aduocat, in the contrair, sayis the samyn shuld nocht be admittit.

The parties find caution 'that thai fall compeir befor the Justice, or his deputis, the thrid day of pe nixt Justice-air of the Scherefdome quhair thai duell ["Beruik"], or soner vpone xv dayis wairning, to vnderly the law for the crymes aboue specifeit; vnder the panes contenit in the Actis of Parliament.'

Slaughter.

Nov. 13.—ROBERT ROBERTSOUNE, seruitour to James Fawfyde, younger of that Ilk.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} Johnne Faufyde, servand also to the said James Faufyde, be streking him in the bellie with ane knyfe, within the barne of Faufyde, vpone the tent day of November instant; quhair of, vpone the tuelf day of this instant moneth, he deceiffit.

PERSEWAR, James Faufyde, Younger of that Ilk, as maister.

The pannell Confessis the cryme, and craves Godis and the pairteis pardoun, and mercie for the samyn.

VERDICT. The Affyse, all in ane voce, be the mouthe of Johnne Hall in Prestoune, chancellor, fand the said Robert to be Culpable and conuict of the said crewall Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair his heid to be strukin frome his body; and all his moveabill guidis to be escheit, &c.

Falset—Perjury.

Dec. 20.—ALEXANDER CUIK, Notter, Schereff clerk of Beruik.

Dilaittit of Falset, committit be him in his office of Notarie, in geving out tua feuerall extractis of ane Seasing, of tua feuerall daittis: And of Periurie, eftir he was solempnelie fuorne, in presens of the Lordis, to declair the veritie in the premiffis.

DITTAY against the Pannell.

FORSAMEKILL AS, it is expresse provydit, statute, and ordanit, be dyuerse Actis of Parliament, maid aganis false Notteris, and false periuret Witneffis, that gif ony Notter committis falset, and beis convict and fund gilty pair of, (he) fall be pwneist to the daithe: And siclyk, quhair ony Witnes depones falslie, fall lykwayis be pwneist, be pearceing of pair tungis, and escheiting of all pair moveabill guidis; and forder pwneischment to be inflictit in the persone of pe saidis fals Witneffes, at the sicht of and discretion of pe Judge, accoirding to the qualitie of pe fact: As pe saidis Lawis and Actis of Parliament in thame selfis proportis. Nochtwithstanding quhair of, it is of veritie that pe said *Alexander Cuik*, being imployit as Notter be *Johnne Home of Slegden* for geving Seasing to him of pe Landis of Eister Pleulandis, giftet and disponit to him be our Souerane lord, as vaikand¹ in his Maiesteis handis be pe fforfaltour of vmq^{le} *Frances Erle Bothuell*; and that, conforme to ane Precept direct furth of pe Chancellarie to Adame Cokburne, Schereff depute of pe Scherefdome of Beruik for pe tyme, vnder pe Quarter Seill, for geving Seasing to pe said Johnne Home pair of; and to extract and draw furth to him ane Instrument pairupoun; the said Alexander maist falslie and erroneousslie, for his awin gane and lucre, extractit out of his Prothogoll² tua feuerall Extractis of pe foirsaidis Instrumentis of Seasing, of tua dyuerse daittis, the ane of pe dait pe xxij of Februar 1592, and the vper in anno 1593: As pe saidis tua Extractis producet, vnder pe saidis Alexanderis subscription, beiris. Lyk as, in regaird of pe said falsie Extract of pe foirsaid Seasing, ane action of Improbatioun being intentit, and as zit depending befor pe Lordis of Sessioun, at pe instance of his Maiesteis Aduocat, and *Walter, Lord of Balcleuch*, as heritour of pe Lordschip and barrony of Haillis, quhair of pe saidis landis of Eister Pleulandis ar pairt and pertinent, and lykwayis at pe instance of *Alexander Haitlie*, burges of Edr, as takisman pair of, aganis pe said *Johnne Home*, ffor improving of pe foirsaid Instrument of Seasing, extractit be pe said *Alexander Cuik*, and gevin to pe said Johnne Home of the saidis Landis; and pe said Alexander being dyuerse tymes summond in pe said action of Improbatioun, to haif gevin Testimonie and declaratioun pairanent; and, in end, compeirand befor pe saidis Lordis, vpone the tuelf day of December instant, and being examinat in pair lordschipis haill presens, anent pe trew dait of pe foirsaid Instrument of Seasing, and being solempnelie fuorne to declair pe verritie pairin, the said *Alexander Cuik* than affirmet, constantlie, that pe trew dait of pe said Seasing was vpone pe xxij day of Februar, 1591, to the quhilk he was Notter; and abaid at pe Extract of pe Instrument gevin furth be him to pe said Johnne Home pairupoun; and pairwith declairit that pe vther Extract of pe same Seasing, drawin furth be him to *Alexander Haitlie*, beiring dait pe xxij of Februar, Im.Vc.

¹ Lat. *vacare*. Fr. *vaquer*.

² Protocol-book—an official Register ordained to be kept by every Notary.

fourfcoir threttene, was ffalfe; AND pe said Alex^r being paireftir, vpone the xvij and xix dayis of pis instant moneth, re-examinat, in pe saidis Lordis prefens, and folempnelie fuorne to declair pe verritie, concerning pe dait of pe saidis tua Extractis, he vareit fra his former Depositiones, maift impudentlie: Lyk as, his Prothogoll buik was viciat be him, in pe dait foirfaid, fcoiring out ‘ primo,’ and putting in ‘ tertio;’ and pairefter fcoiring furth ‘ tertio,’ and wryting agane ‘ primo.’ Quhairin he hes declairit him felff to be ane ffals and infamous Notter; and be his contrair Depositiones, maid in his examinatioun, to be ane manifest ffals and menfuorne Witnes: Lyk as, pe saidis Lordis of Counfell, be pair Decreit, gevin vpone his tryell and Examinatioun, hes fund pe said Alex^r to be ane ffals Notter and manifest Periuret Witnes: As the Extract pairof, vnder pe fubfcriptioun of *my Lord Clerk of Register*, daitit pe xix day of pis instant, togidder with his Depositiones, maid in prefens of pe saidis Lordis, beiris. LYK AS, for verifeing of his ffalfet aboue writtin, pair was ane Band maid be him to the said *Alexander Haitlie*, quhairin he obleift him felff to ftand and abyde at the Inftrument extractit be him, daitit pe 23 of Februar, 1593, he procureing his Maiefteis Remiffioun for pe famyn. FOR pe quhilk ffalfet and Periurie, committit be pe said Alexander, he aucht and fould be pwneift to pe daith, in example of vtheris.

ASSISA.

James Levingftoun of Jerifwoid,	Jo ⁿ Keir, mercheand burges, Ed ^r ,	Thomas Mulliekyn, mercheand
George Logane of Bonytoun,	Patrik Somervell, mercheand	burgess of Edinburghe,
James Nafmyth of Poffo,	burgess thair,	James Halyburtoun, mercheand
Joseph Douglas of Pompharftoun,	Robert Halyburtoun, mercheand	burgess thair,
Johnne Gairdin, merchand burges	burgess thair,	Jo ⁿ Mitchelhill, mercheand burges
of Edinburghe,	Jo ⁿ Keir, skipper, burges thair,	thair,
James Douglas in Lugtoun,	Johnne Reid, indueller in Leyth,	Rob. Moffett, merch ^d burges thair.

The Aduocat takis instrumentis of the fweiring of the Affyfe: And for veri-
feing of the Dittay, producet the tua Instrumentis of Seafing, vnder the pannellis
fubfcriptioun, baith to ane effect, of dyuerfe daittis: Producet lykwayis, the
pannellis feuerall Miffiue Letteris, direct to *Alexander Haitlie*, beirand, that the
Seafing extractit to him, of the dait the xxij of Februar, I^m.V^c. fourfcoir thret-
tene, was the trew Extract, and that he wald abyde thairat: Producet alfo,
dyuerfe Letteris, writtin be the pannell to *Williame Ker*, beirand that the
Seafing extractit to him, of the dait the xxij of Februar I^m.V^c. fourfcoir ellevin,
was the trew Extract, and that he wald abyde thairat: And ficlyk, producet ane
Letter, direct be him to the Lordis of Seffioun, being feik for the tyme, all
writtin and fubfcriuit with his hand, teftefeing the said Extract gevin to the
said *Williame Ker*, daitit in anno 1591, to be the only trew Extract: Producet
alfo, the pannellis Depositiones, maid be him in prefens of the Lordis, beiring
the Confessioun of the Extract of the Seafing in anno 1591, to be the trew Ex-
tract, and the vther, of the dait 1593, to be ffals: And vpone his Re-examina-
tioun, beiring the Seafing gevin in anno 1593 to be trew, and the vther in anno
1591 to be ffals: Togidder alfo with his Prothogoll-buik, alfo producet, quhair
it is twyfe mendit in the dait of the said Seafing. And laft, producet the
Lordis Decreit, ffinding the pannell to be ane ffalfe Notter, and ane manifest

periuret Witnefs. And vpon the production thair of, askit instrumentis; as also vpon the pannellis Judiciall Confessioun of the said ffalsēt.

Quhilk crymes he Confessit, judiciallie, in thair presens and audience, to be of veritie; and cravet God mercie for the samyn.

VERDICT. The Assyse, all in ane voce, be the mouthe and declaratioun of the said George Logane of Bonytoun, chancellor, ffand, pronuncet, and declairit the said Alexander Cuik to be ffylit, culpable, and convict of the saidis crymes, specifeit in his Dittay.—SENTENCE. To be tane to the Mercat-croce of Ed^r, and thair, as ane ffalse Notter and Periuret Witnes, to be Hangit vpon ane gibbet, quhill he be deid; and all his moveabill guidis to be escheit, &c.

[*Sir Williame Heart of Prestoun, Justice-Depute.*

ASSESSOURIS TO THE JUSTICE, nominat be the Lordis of Secreit Counsell, conforme to thair lordschip Actis of Counsell, daitit the xx of Februar, 1617.

Sir Richard Cokburne of Clerkingtoun, kny ^t ,	Sir Alexander Drummond of Meidhope, kny ^t ;
Lord Previe feill;	Sir Andro Hammiltoun of Reidhous, kny ^t ; and
Sir Williame Levingstoun of Kilfythe, kny ^t ;	Sir James Skene of Curriehill, kny ^t . ¹]

Usurping his Majesty's Authority—Murder under Colour of Law.

Feb. 26, 1617.—GEORGE GORDOUN of Geicht.

Dilaitit of Vfurpation of our fouerane lordis authoritie, in the violent and vnlauchfull taking of vmq^{le} Frances Hay, sone to vmq^{le} George Hay of Ardlethame, ffurth of the Place of Logyruif, pertening to Williame Hay, ffear of Brunthillis, his brother-in-law, vpon the xvij day of December, 1615 yeiris; bringing him as ane captiue and prissoner to the burgh of Aberdene; keiping and detening him in captiuitie, in a priuat hous or ludgeing of the said Laird of Geicht, within the Gallowgait, callit 'the Bony wyfe's Inn,' for the space of ffourtie aucht houris, or thairby, &c.²

PERSEWARIS, Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord, for his Maiesteis intreis; Mariorie Keith, as mother to the said vmq^{le} Frances Hay.

PRELOCUTOURIS in defence, The Laird of Clwny, (Alexander Gordoun,) the Laird of Strathdoun, Mr Thomas Nicolfone, elder, Mr Alexander Peibles, Mr Robert Fairlie, Aduocattis.

The JUSTICE and ASSESSOURIS, with the advyse of ather pairtie, allweill perfewar as defenderis, continewis this dyet to Fryday nixt, the last of this instant. The persones of Assyse wairnet *apud Acta*; ilk persone vnder the pane of thre hundreth merkis.

Alexander Gordoun of Clwny become fouertie for the entrie of the said Laird of Geicht, &c., vnder the pane of ffyve thowfeand merkis money.

¹ All ordinary Lords of Session, with the exception of Sir Alexander Drummond, who was an Extraordinary Lord. ² See Aug. 28, 1616, where the Dittay is inserted. The great importance of this remarkable Case induces the Editor to preserve all the useful information which is to be gathered from the Records.

[*Sir Willame Heart and Mr Alexander Coluile, Justice-Deputes.*]

PERSEWARIS, Sir Willame Oliphant of Newtoun, kny^t; Mariorie Keith, as mother; George Hay, as brother to the defunct; Willame Hay, ffiear of Brunthillis, George Hay, his brother.

PRELOCUTOURIS in persute and fortificatioun thair of, Frances Erle of Errole, Laurence lord Oliphant, My Lord Zester, Alexander Keith of Ludquharne.

PRELOCUTOURIS in defence, George Marqueis of Huntlie, My lord of Eglingtoun, My lord Viscount of Lauderdaill, My lord Ochiltre, Mr Thomas Nicolfoune, and Mr Alexander Peiblis.

Feb. 28.—THE lord Aduocat producet his Maiesteis WARRANT, anent the persute of the pannell for the crymes contenit in the Summondis, daitit at Quhytehall, the 17 of ffebruare instant; and desyret the samyn to remane in proces.

Eftir reiding of the Dittay, it is allegit be the pannell and his prelocutouris, that thair is dyuerse substantiall heidis contenit thairintill, quhilkis ar nawayis infert in the coppie gevin to thame be the Messinger executour of the Summondis; and producet the coppie, fubscryuit be the Messinger, for verificatioun thair of: And in respect that na autentik coppie is delyuerit, desyres ane continuatioun of this dyet to the morne, to the effect thai may be advyset with the Dittay, and vpone thair Defenffis to be proponit be thame aganis the samyn.—It is ansuerit be my lord Aduocat, that the allegiance foirfaid aucht to be repellit, and na continuatioun sould be grantit, in respect of the Summondis and Executiones thair of, producet, beiring ane autentik coppie to be delyuerit to the pannell: And forder, thair was na necessitie to charge the pannell, or to geve him ane coppie of the Summondis, bot only to his cautioneris, quha become fouertie for his entrie to vnderly the law for the crymes lybellit.

THE Justice Repellis the allegiance; in respect of my lord Aduocatis ansuer.

Thaireftir the pannell, nochtwithstanding of my lord Justice interlocutour, desyres ane convenient tyme to be grantit to thame to reid and confider the Summondis producet; and that thai may haif libertie to remoue thame selffis apairt, to aduyse thairupoun.—Quhilk the Justice grantit; and ordanit the Summondis to be gevin vp to the pannellis prelocutouris, to be advyset thairupoun.

It is allegit be Mr Thomas Nicolfoun, for the pairt of the pannell, that he did na wrang in taking of ffances Hay *privata autoritate*; becaus it is of verritie, that vpone Fryday, the fyftene day of December, immediatlie preceeding the day of his allegit taking, quhilk was vpone the xvij day of the said month, the said vmq^{le} *Frances Hay* had flane vmq^{le} *Adame Gordoun*, brother to the pannell, for the quhilk he fled; and sa, the said Laird of Geicht, being the avenger of bluid, viz. the eldest brother of the said Adame, it was lauchfull to him to ferche and feik the malefactour, to the effect he mycht be presentit to the Justice: Lyk as, be Act of Parliament, maid in the dayis of King James the ffirft, of worthie memorie, Parlamento sexto, cap. 89, the Scheref and haill cuntrie is

commandit to ferche and feik the man-flayer, being certifeit of the Slauchter; and fa, mekill mair mycht the avenger of bluid, be doing na wrang in the taking: Lyk as, eftir the taking of him, he presentit him to the Schereff but¹ ony hurt of fence, or iniurie done to him: And that it is lauchfull to ony of the people, alfweill as to the avenger of bluid, it is cleir, be ane verrie trew example; ffor gif ane Theif fteill ony mannis guidis, it is lauchfull to the perfone fra quhome the guidis ar ftowin, to convene his kyn and freindis, and raife the cuntrie, and perfew the Theiff fa lang as he is *in fuga*, ay and quhill he apprehend him, or put him out of the cuntrie; and this he may do but ony Warrant of ane Magiftrat; as is cleir and nottour be the daylie pratique of the cuntrie: *Ergo*, in this cryme of Slauchter, quhilk is of far gritter importance than fteilling of guidis, it was lauchfull to ony of the people, *multo magis* the avenger of bluid, to apprehend the malefactour, and delyuer him to the Juftice: And as it was lauchfull to the pannell to ferche, feik, tak, and apprehend the malefactour, and delyuer him to the Juftice, evin fa it was lauchfull to him to do the famyn with conuening of his freindis, (nawayis granting he did the famyn,) and with quhatfumeuir airmes; ffor vtherwayis, this abfurditie fould follow, that the malefactour fould efcaip, and the innocent perfone fould be flane; in fa far as, gif the innocent perfone fall preife to apprehend the malefactour airmet with hagbutis and piftolettis, namelie, haifing the benefit of ane houfe, it war eafie for him to fla sic as focht him; and fa he fould nocht be apprehendit. *Secundo*, for this caus he did na wrang, becaus it is an reule of the Law, that *conceffo aliquo extremo, conceduntur omnia media, per que pervenitur ad illud*; than it is fubfumet, gif it was lauchfull to tak the man-flayer, as is afoir provin, *ergo*, it was lauchfull to vfe all the midiffis² be the quhilk he fould be taken, baith of airmour and vtherwayis.

It is anfuerit be my lord Aduocat, to the *first* pairt, anent the avenger of bluid, thair is nather Law nor reffone can mak *the Laird of Geicht* the avenger of bluid, bot only the Kingis Maieftie, his Juftice, and vtheris haifing power and authoritie of his Maieftie. As for the argument proponit vpone the Act of Parliament maid in the dayis of King James the ffirst, the allegiance foundit thairupoun is altogidder irrelevant, impertinent, and altogidder repugnant and difconforme to the Act; be the quhilk, it is ftatute, that the Man-flayer fould be perfewit be the Schereff, and the cuntrie to concur; and gif the malefactour be tane be the Schereff, he fould be put in fure firmance, quhill³ the Law be done vpone him; and gif he be tane reid-hand,⁴ to be done with that fone.⁵ It is nevir allegit that the Schereff followit the allegit malefactour, nather that he was

¹ Without.
commission of the fact.

² Means.

³ Until.

⁴ With the red or bloody hand; instantly after

⁵ Sun; day; before sunset of that day.

tane with reid-hand; fua that the allegiance is altogether irrelevant, quhilk is founded vpon that Act, as direct repugnant thairto: And as to that pairt of the allegiance, beirand that the Laird of Geicht tuik and apprehendit the allegit malefactour, that alledgeance contenis ane grit abfurditie, haifing nather Warrant, grund, nor fundament, nather of the Lawis of the realme, nor of the Ciuile Law; feing, be the Lawis of this realme, the Schereff is appointit to follow the Man-flayer; and be the Ciuile Law, it is nocht leifum¹ to ony privat man to tak and apprehend ony perfone, without ane Commiffioun and Warrant frome the Magiftrat: Leg. *Neminem*, Cod. *de exhibendis Reis*, lib. 9, Tit. 3, Leg. vltima, *Neminem exhibendum esse in iudicio precipimus, nisi de cuius exhibitione Iudex pronunciauerit*. Item, Bartolus, ad dictam Legem: Et Domaderius, cap. 15, num. 40, idem afferit: Et toto titulo, Codice *de Plagiariis*: Et lege *Raptores*, de Episcopis et Clericis: Item, Julius Clarus, § finali queft. 31, in principio: Be the quhilkis premisses, it is cleir, that ane privat perfone, and speciallie the pairtie, had na power to tak the allegit malefactour. As to the argument proponit vpon the example of the profecutioun and following of ane Theif, it is altogidder impertinent to this purpois; feing the Theif is followit, *in ipfo actu*, immediatlie eftir the committing of the cryme, with the guidis and geir of the followeris; quhilk is permittit be the Lawis of this realme, be the Actis of Parliament maid thairanent, and the vniuerfall confuetude of the fame, it is lauchfull to ony man, in following of his awin guidis and geir, to apprehend the Thevis; and albeit the Theif be flane in the following, the Slayer is maid frie be the lawis of the realme. It is abfurditie to think that the Schereff him felff may follow ony man committer of the Slauchter, and instantlie put handis in him, at his awin hand, *nifi in flagranti crimine*, quhilk is nocht allegit in this caice; and albeit he war tane *in flagranti crimine*, or reid-hand, as the Act of Parliament beiris, the Law ought to be done vpon him within that fone. And quhair it was allegit, that gif it war lauchfull to the Laird of Geicht to perfew or tak him, it was lauchfull to tak him with convocatioun of our fouerane lordis legis, and with wapponis forbiddin; it is anfuerit, that the first propofitioun is altogidder abfurd, in respect of the first anfuer maid be the perfewaris; and consequentlie, the taking with convocatioun of his ffreindis, and forbiddin wappones, feing he had na authoritie, nather to tak, nor beir forbidden wapponis: In respect quhairof, the first allegiance, and haill argumentis thairin contenit, aucht to be repellit.

It is duplyit for the pannell, that his allegiance proponit ofbefoir ftandis verrie relevant, nochtwithftanding of ony anfuer maid thairto; and quhair the famyn is querrellit,² that thair is no law that makis the avenger of bluid, bot

¹ Lawful.² Disputed; argued.

the famyn pertenis only to the Kingis Maiestie, it is anfuerit, that the pannell makis no questioun thairin *quo ad executionem*; bot the Law callis him the ane avenger of bluid, *quia habet jus prosequendi secundum formam juris*. As to that pairt, alledgeing the disconformitie betuix the allegiance and the Act of Parliament, it is duplyit, that thai ar verrie conforme; becaus be baith the Actis allegit, the Kingis haill legis ar commandit to concur and affist the taking of the malefactour with the Scheref, *ergo*, thair was na wrang done, feing the Schereff was in ferching; and in respect that he could nocht ferche in all pairtis; and the notorietie of the fact, and the maliefactouris fleing, being *in fuga*, and sa taking the cryme vpone him, quhatfoeuer was done be the pannell man be estemit as concurring with the Sher e speciallie, haifing respect, that the pannell tuik the malefactour but ony wrang or hurt of his body, or iniurie done to him, and referuit him saif but ony iniurie, quhill he was presentit to the Schereff, &c.¹

THE JUSTICE, with advyse of his Assessoris, Continewis all forder disputatioun in this mater to the morne, the first of March, 1617.—The Laird of Clwny again becomes his surety.

[*Mr Alexander Coluile, Justice-Depute.*]

DECLINATURE OF THE JUDGE.

Mar. 1.—IT is allegit be the pannell, that Mr Alexander Coluile can nocht be Judge in this cause, in respect he is fourtis of kyn to the Countes of Errole; my Lord of Arrole, hir husband, being persewar, viz. The said Mr Alex^r Coluiles grandame was ane dochter of the House of Lochlevin, quha is ane; the said Mr Alexanderis guidfchir, tua; the said Mr Alexanderis father, thre; and him self the fourt: And referris the probatioun of this rekning to Mr Alexanderis awin ayth of verritie.—It is anfuerit be my lord Aduocat, that this Declinatour can nocht be ressaui this day, becaus Mr Alexander Coluile, being Justice-depute in this Judgement, quhilk is ane ordiner and Supreme Jurisdiction, na declinatour aucht to be proponit aganis him; at the leift, na kinreid² fould be ony caus to declyne him. *Secundo*, the declinatour can nocht now be ressaui, becaus the Court being fenfit yesterday, he fitting as Judge, the persewaris and defenderis compeirand with thair prelocutouris, thair is ane Interlocutour pronuncet in this caus; and eftir pronunceing thairof, ane peremptour exceptioun (was) proponit be the pannell aganis ane member of the Dittay; eftir the quhilk, ane declinatour can nocht be proponit.

To the quhilk it is anfuerit be the pannell, that the declinatour exceptioun

¹ It has not been deemed expedient to insert the whole of the arguments of the parties in this keenly contested case, which are extremely prolix, and occupy above sixty pages of the Record. The opening of the pleadings has been given as a specimen of the procedure of the Court at this early period.

² No objection on the ground of kindred or relationship.

standis relevant, notwithstanding of my lord Aduocattis twa answeris; namelie, the *ffirst* beirand, that Mr Alexander is ane Ordiner Judge of this Court, creat, electit, and fuorne; that pairt of the answer *non relevat*; becaus the creatioun and admissioun of Mr Alexander Coluile takis nocht away the pannellis exceptioun declinatour, *ex superveniente causa*, vpon consanguinitie of bluid to the persewar; ffor than it sould follow, that in an actioun persewit befor the Lordis of Sessioun, quha are supreme Judges of the land in ciuile caussis, at the instance of ane persone, quhais brother is ane of the Lordis of Sessioun, it sould follow that he sould be Judge to his brother, persewer in the caus persewit be him aganis ane vther, quhilk can nocht be: As to the *secund* member of the answer, beirand, that the pannell can nocht be hard to propone this Declinatour this day, be resson that in ane Court haldin yisterday in the samyn caus, Mr Alexander sat as Judge, befor quhome the pannell proponit dyuerse exceptiones dilatour and peremptour, aftir the proponing quhairof, the pannell can nocht be hard to propone ony exceptioun declinatour, be resson that ane exceptioun declinatour is the first exceptioun sould be proponit in judgement; —to the quhilk it is answerit, that notwithstanding of the said secund answer, the exceptioun declinatour standis relevant aganis the said Mr Alexander Coluile, be resson thair was ane sufficient judgment and judicatorie establischet yisterday by¹ the said Mr Alexander, to wit, Sir Williame Heart, ordiner Justice, quha sat in judgement, and pronuncet Interloquitour in this caus; sa that this exceptioun, gif it had bene proponit yisterday, could nocht be respectit, becaus the Judgement had bene ane persyte Judgment without him, quhilk is nocht this day in this caice; and sua, be the presens yisterday of the said Sir Williame Heart, and his absence this day, the caice is alterit: In respect quhairof, the exceptioun standis relevant, notwithstanding of the answer. And forder, quhair it is answerit, that Mr Alexander Coluile is Justice-generall, *in criminalibus*, thair can no exceptioun of consanguinitie be proponit aganis him as depute, it has nather Law to sustene the answer, and it is aganis the daylie practique; ffor thair is na Judge in Scotland that hes that priuilege to sit *in causa consanguinei*, bot only the Lordis of Sessioun; quhilk is done of necessitie, for vtherwayis thair will be no judgement thair, quhilk is nocht in this caice,—ffor the removeing of ane only Judge may be suppleit be the fitting of ane vther, *vbi non est penuria*: And this was practizet in the grittest pannell that was in our dayis, betuix the Lairdis of Caddell and Ardkinglas, for the slauchter of the Laird of Caddell; in the quhilk, the Justice-depute was set,² as being depute to the Erle of Ergyle, quha bakit³ the persute; lyk as, the Kingis Maiestie haveing chofin dyuerse Judges *successiue* eftir vtheris, thay war all declynit, pairtlie vpon consanguinitie with the Erle of Ergyle, and pairtlie as being pensioneris to sic as assistit

¹ *Forbye*; besides; independent of.² Declined.³ Backed; countenanced; supported.

the perfute ; and namelie, Mr Thomas Henderfoun, Commiffar, was fet, becaus he was within greis¹-defendant with the Hous of Bais ; and Mr Thomas Nicolfoun, as pensioner to my Lord Ogilvie, quha fortifeit the perfute.

It is allegit be the perfewaris, that the declinatour aucht nawayis to be reffaut for the refones proponit of befoir ; and fpeciallie, that this Court is a Supreame Court *in suo genere, viz. in criminalibus*, and that the faid Mr Alexander Coluile hes alreddie fittin and voittit in this caufe, eftir the proponeing of dilatour and peremptour exceptiones thairin, na declinatour exceptioun being proponit aganis him : And quhair it is allegit be Mr Alexander Peibles, that the Lordis of Seffion will be declynit, viz. ane brother may nocht judge in ane vther brotheris caus, nor the fone in the fatheris caus, *et e contra* ; that is of verritie, in respect of ane fpeciall Act of Parliament maid thairanent ; but in all vther cauffis, thair is na exceptioun, nather of affinitie nor confaguinitie, that will declyne ony of the Lordis of Seffion. As to the practique allegit concerning *Arkinglas* proces, that aucht nawayis to be respectit in this Judgement, becaus the Justice Generall was pairtie perfewer, and affistit the perfute, and fa nane of his deputis could fit ; bot we ar nocht heir in that caice.

THE JUSTICE, with advyse of his Affeffouris, continewis Interloquitour vpone the allegeances foirfaidis, and anfueris maid thairto, anent the declinatour proponit aganis him, to Tyfday nixt.—The Affyse wairnit *apud Acta* for thair compeirance the faid day, ilk perfone vnder the pane of ffoure hundreth merkis.

DECLINATURE of two of the Affeffors.

Mar. 4.—It is allegit be my lord Aduocat, that *my Lord of Meidhoip* can nocht be Affeffour to the Justice in this caus, in respect my Lord Marqueis of Huntlie, and my Lord of Meidhopes wyfe, ar within greis-defendant, viz. : My Lord Marqueis is ane ; his Lordschipis mother, the Countes of Huntlie, tua ; and hir father, James Duik of Chattellerault, third ; on the ane fyde : And the Bifchope of St Androis, brother to the Duik, ane ; the Laird of Blair, his fone, tua ; and my Lord of Meidhopes wyfe, the Laird of Blairis dochter, the third ; on the vther fyde. In respect quhairof, he can nocht be Affeffour.

It is lykwayis allegit be my Lord Aduocat aganis *Sir Andro Hammiltoun of Reidhous*, that his lordschip can nocht be Affeffour to the Justice in this caufe ; because my Lord Marques and he ar ferdis of kyn, and fa within greis-defendant, viz. : my Lord Marqueis is ane ; his Lordschipis mother, the Countes of Huntlie, tua ; James, Duik of Chattellerault, hir father, thred ; and Beatoun, the Duikis mother, quha was fister to the Laird of Creiche, fourt ; on the first pairt :—And ficlyk, the Laird of Creiche-Beatoun, brother to the Duikis mother, ane ; the Lady Balcleuch, dochter to the faid Laird of Creich, tua ; my Lord of Reidhouse mother, the faid Lady Balcleuches dochter, thrid ; and my Lord of

¹ Certain degrees of near relationship, called *degrees-defendant*.

Reidhous, him self the fourt. In respect of the quhilk rekning, the veritie quhair of is sufficientlie knawin to my Lord him self, he can nocht be Assessor in this cause.—It is answered be Mr Thomas Nicolson, as prelocutor for the pannel, that he can nocht be bund to geve ane answer to the tua allegiances foirsaidis, foundit vpon the declinatur of the tua Assessouris; becaus in the last Court haldin on Setterday, the first of this instant moneth of Marche, thair was ane Declinatur exceptioun proponit be the pannel aganis the Justice him self, quhy he could nocht sit as Judge in this cause, viz., that he was within greis-defendant to the Countess of Errole; my Lord of Errole, hir husband, being ane persewar. To the quhilk declinatur, dyuerse answeris, duplyis, and triplyis war proponit, quhilk as yit ar nocht discussit, bot the Judge continewit Interloquitour vpon the said exceptioun-declinatur to this day: And thairfor, *ante omnia*, befor ony alledgeance may be had ather be persewer or defender, Interloquitour man¹ be first pronuncet vpon the said alledgeance, conforme to the ordour of the proces; quhilk man be done of necessitie; for, gif the Justice find the declinatur relevant, quhilk will be provin be his awin aith of veritie, than consequentlie he can nocht sit as ane Judge; and gif he be removet as Judge incompetent, he can nocht pronounce Interloquitour in the allegiances proponit aganis my Lord of Meidhoip and my Lord of Reidhouse as Assessouris, quhidder thay may be Assessouris or nocht, *qui ubi non est Judex, ibi nec Assessor, nec processus, nec sententia interloquutoria, litiscontestatio, nec sententia definitiva*: And thairfor, quhill first it be pronuncet vpon the foirsaid declinatur proponit aganis the Judge him self, thair can na alledgeance be proponit or discussit aganis the Assessouris.

It is answered be my lord Aduocat, as of befor, that the said Declinatur aganis the Judge, as Justice-depute, can nocht be ressaivit, in respect of the estait of the proces.

THE Justice continewis the dyet, and Interloquitour vpon the exceptiones-declinatur aboue written, to Fryday nixt, the sevint of Marche instant: And Ordanis Cautioun to be of new fund be the pannel for his entrie that day, to vnderly (the Law) for the said cryme, vnder the pane of ffyve thousand merkis.

The Assyse wairnit thairto, *apud Acta*, ilk persone vnder the pane of ffyve hundreth pundis money.

[*Mr James Bannatyne and Mr Alexander Coluile.*]

COMPEIRIT judiciallie Williame Hay, seruitour to my lord Erle of Errole, and producet ane Commissioun of Justiciarie, vnder his Maiesteis Caschet² and Court signet, subscriuit be my Lord Chancellor, my Lord of Mar thesaurer, and

¹ Must. ² A silver stamp, bearing an exact *fac-simile* of the King's signature, invented for the purpose of abridging labour to the King, whose subscription is required to so many documents. It is still in use, and is affixed to certain writings not requiring his Majesty's 'sign-manual.'

my lord Marqueis of Hammiltoun ; quhairby Mr James Bannatyne of Neutyld is constitute his Maiesteis Justice be Commissioun. As also producet thairwith ane Act of Counfall, beirand the said Mr James acceptatioun of the said Commissioun of Justiciarie and office thair of, and geving his ayth in thair lordschipis prefens, for his faithfull discharge of the said office. Of the quhilk Commissioun and Act of acceptatioun and creatioun, the tennour followis :

COMMISSION in favour of Mr James Bannatyne of Newtyld.

JAMES R.

JAMES, be the grace of God, King of Grit Britane, France, and Ireland, defender of pe faithe. To all and findrie our legis and subiectis quhome it effeiris, to quhais knowlege thir our letteris fall cum, greting. FORSAMEKIL AS George Gordoun of Geicht, being callit and convenit befor our Justice, in our Tolbuthe of Edinburghe, to haif vnderlyne pe law for pe taking, detening, and executioun of vmq^{le} Frances Hay, and for beiring, weiring, and schuiting of hagbutis and pistolettis, and for pe perfute and invasioun, hurting, wounding, and mutilatioun of the thre brether of Brunthillis ; in maner, and at pe tyme specifeit and contenit in the Criminall Letteris direct pairupoun : And dyuerse dyettis being keipit to this effect ; in end, the matter hes reslavit ane delay and continuatioun, by the age, infirmitie, and seiknes of Sir Williame Heart, quho may nocht attend pairupoun ; and by ane declinatour proponit aganis Mr Williame Coluile, colligue to pe said Sir Williame, in the office of Justiciarie, sua that now the delay and hinder of Justice proceidis vpon the want of ane vn suspect Judge. QUHAIRFORE, We, with advyse of the Lordis of our Secreit Counfall, haif maid and constitute our louit *Mr James Bannatyne of Newtyld*, oure Justice in that pairt, to the effect vnderwritten ; Geveand, grantand, and committand to him our full power and commissioun, expres bidding, and charge, to vse and exerce the office of our Justice in all and findrie thingis concerning the Tryell of pe said George Gordoun of Geicht, vpon the perticuler crymes and pointis of Dittay specifeit and contenit in pe Criminall Letteris raifet aganis him. And for this effect, to fence, hald, and continew Justice Courtis, ane or ma, within the Tolbut of our burgh of Edinburgh, fuitis to mak be callit, absentis to amerchiat, and to creat officeris and memberis of Court neidfull, if neid beis ; and in the saidis Courtis the said George to call, be Dittay to accuse, and him to the knowlege of ane Assyse to put ; and as he fall happin to be fund culpable or innocent of pe crymes contenit in the saidis Criminall Letteris, or ony of thame, to caus Justice be ministrat vpon him, conforme to pe lawis of our realme ; Assyffis neidfull to this effect, ilk persone vnder fuche panes as fall be thocht meit, to summond, wairne, chuse, and caus be fuorne, and generallie all vper thingis to do, exerce, and vse, quhilkis for executioun of pis our Commissioun, ar requisite and necessar ; fferme and stable halding, and for to hald all and quhatsoeuir thingis fall be lauchfullie done heirin. GEVIN vnder our signet, Att Edinburghe, pe fourt day of Marche, and of our regne pe xiiij and fiftie zeiris, 1617.

AL. CANCELLS. AL. MAR. HAMMILTON.

APUD EDINBURGHE, *quarto die mensis Marcij, anno domini millesimo sexcentesimo decimo septimo*, Red, past, voittit, and allowit.

J. PRYMROIS.

ACT of Acceptation by Mr James Bannatyne.

APUD Edr, *quarto die mensis Marcij, 1617.* The quhilk day *Mr James Bannatyne of Newtyld*, being maid and constitute our fouerane lordis Justice, for trying of George Gordoun of Geicht, vpon the crymes specifeit and contenit in the Criminall Letteris raifet aganis him, at the instance of the mother, broper, and freindis of vmq^{le} Frances Hay, and at the instance of the brether of Brunthill, and of our fouerane lordis Aduocat, for his hienes intreis ; as in the Commissioun maid to the said Mr James pairvpoun, of the dait of thir presentis, at lenth is contenit. The said Mr James compeirit personallie, befor the Lordis of Secreit Counsell, Acceptit the said Commissioun vpon him, and gave his aithe

that he fall discharge the said Commiffioun vprichtlie and faithfullie, accoirding to his knowlege; as he will anfuer to God and the Kingis Maieftie pairupoun.

Extractum de libris Actorum Secreti Confilij f. d. n. Regis, per me Jacobum Prymrois Clericum ejusdem, sub meis signo et subscriptione manualibus. JACOBUS PRYMROIS.

[*Mr James Bannatyne and Mr Alexander Coluile.*]

Mar. 7.—THE Justice continewis this matter to the morne, the aucht of this instant. The Affyse wairnit thairto, *apud Acta*, &c.

The Laird of Geicht protestis, that the production of the said Commiffioun of Justiciarie, and fenceing of this dayis Court, fould nawayis preiudge him of his declinatour the nixt dyet, nor ony vther declinatour proponit be him of befoir in this cause.—My lord Aduocat protestis in the contrair.

[*Mr James Bannatyne.*]

Mar. 8.—THE perfewaris, nochtwithstanding of the former declinatour proponit aganis the tua Assessouris, ar content that thai remane Assessouris in this caus, conforme to the Counsellis Act maid anent thair constitution; and passis fra the saidis declinatouris.

Mar. 11-12.—THE 'disputatiounis' proceeded at great length, on both fides, on this day, 'Tyfday the xj instantis,' and the following day, on the merits of the cause. They are very prolix, and unnecessary to be inserted in this place.

Mar. 13.—THE Justice and Assessouris, ffor obedience of ane WARRANT of the Lordis of Secreit Counfall producet be my Lord Justice Clerk, continewis this Justice Court, and all forder disputioun in this cause, to the aughtene day of Junij nixtocum; and Ordanis the pannell to find cautioun, &c.

JUSTICE, Justice Clerk, and 3our deputis. 3ow fall, vpone the fight heirof, continew 3our Court and dyet appointit for Tryell of George Gordoun of Geicht, ffor the taking, detening, and executioun of vmq^{le} Francis Hay; and for pe beiring and weiring of haquebutis and pistolettis; and for pe persute and invasioun of the breper of Brunthillis, vntill the aughtene day of Junij nixtocum; takand new cautioun, conforme to pe ordour: Quhairanent thir presentis fall be 3our Warrant. ATT ED^r, the xij day of Marche, 1617. AL. CANCELL^s. AL. MAR. BYNNING.

My lord Aduocat declaris that he consentis to the former continewatioun, only becaus of his Maiesteis Letter, direct to the Lordis of Secreit Counfall, in that matter, and vpone na vther respect.—The parties find caution for keeping of his Majesties peace, &c.

(Jun. 18.)—THE Justice, be directioun of his Maieftie, continewis this dyet to the xxvij of Junij instant, &c.

(Jun. 27.)—THE Justice, be directioun of the Kingis Maieftie, declairit be my lord Aduocat, Continewis all forder disputioun in this proces, and tryell of the perticuler crymes *respectiue* contenit in the fummondis, to the thrid day of the nixt Justice-air of the scherefdome quhair the pairteis, alsweill perfewaris as defenderis, duellis ('Aberdene'), or foner vpone xv dayis wairning: And Ordanis

the Laird of Geicht to find Cautioun for his compeirance, to the effect and in maner aboue writtin, vnder the pane of ffyve thowfeand merkis, conforme to his Maieftis directioun, reportit be his Maieftis Aduocat, as faid is.

The faid Laird ffand Williame Gordoun of Rothemay, ffear of Cairneburrow, fouertie for his entrie, &c.

[*Mr Alexander Coluile, Justice-Depute.*]

Adultery—Bigamy.

Mar. 14.—ALEXANDER THOMESONE, skynner, burges of Edinburghe, brother to Johnne Thomesone, Leyth; Johnne Guthrie, *alias* callit Williame Laird, and Jonet Cuthbert.

Dilaittit of the crymes of Adulterie, committit be thame, in maner, and at the tymes specifeit in thair Dittayis.

The pannell acknawleges the crymes contenit in thair feuerall Dittayis, and craves God and the Kingis Maieftis pardoun; and offeris thame in his Maieftis will thairfoir.

VERDICT. The Affyse, be the mouthe of George Carnebie, indueller in Ed^r, all in ane voice, ffand the faidis perfonas to be ffylet, culpable, and convict.—

SENTENCE. In respect of the quhilk convictioun, THE JUSTICE, conforme to ane Warrant of the Kingis Maiestie, quhair of the tennour followis:

To our JUSTICE GENERALL of our Kingdome of SCOTLAND, and his deputis quhatfoeur, quhome thase presentis may concerne; and to all and each of thame.

JAMES R. QUHAIRAS, by expres Warrant and command frome ws, our Aduocat is criminallie to accuse and persew befor yow one Alex^r Thomesoun and one Jonet Cuthbert, tuo famous and notorious Adulteraris: Although thair cryme and offence thairin be capitall, and most, by our Lawis, infer payne of death against thame, 3it, out of our princelie grace and mercie, We ar plesed to mitigat the severitie or extremitie of Law in thair behalf. Requyreing yow, by these presentis, in caice of pair convictioun, to ordane the faid *Alexander* to be Banished our dominiones, and his escheit to be furthwith vptakin for our vse be our thesaurer: AND that pe faid *Jonet* be Banished our burgh of Ed^r, and the pairtis of pe cuntrie pairabout. In which behalf, and for performeing of pe whole premisses, these salbe to yow ane Warrant sufficient. GEVIN at Whytehall, the 26th of Januare, 1617.

Ordanit and Adjudget the faid *Alexander* to be banished his Maieftis haill dominionis, and nocht to returne within the famyn at na tyme heireftir, without his Maieftis Licence, vnder the pane of deid; as also, that his haill moveable guidis be escheit, &c. AND siclyk, Ordanit the faid *Jonet* to be banished furth of the burgh of Ed^r and tuelf myles thairaboutis, and nawayis to be fund thair-intill, at na tyme heireftir, without his Maieftis Licence, vnder the faid pane of deid. And as concerning the faid *Johnne Guthrie*, Ordanit him to be tane bak to the Tolbuth of Ed^r, therein to remane in fure firmance, vnto the tyme Dome be pronuncet against him.

SENTENCE *against Johnne Guthrie, alias Williame Laird.*

Compeirit Sir Williame Oliphant of Newtoun, knycht, Aduocat to our fouerane lord for his hienes intreis, and producet his Maiesteis Warrant, direct to the Justice, quhairof the tennour followis :

To our JUSTICE GENERALL of our Kingdome of SCOTLAND, and his deputis quhatsoever, whome these presentis may concerne ; and to all and each of thame.

JAMES R. QUHAIRAS, by expres Warrant and command from Ws, our Aduocat is criminallie to accuse and persue, befoir yow, on *Johnne Guthrie*, for mariage of tuo wyfes, and keiping (befydis thame) of a thrid woman for his concubene ; whiche being a cryme so odious and intollerable amongst Christianes, and mereiting to be most exemplarie puneisched : THEASE ar pairfoir expresse to will and command yow, in caice of the said Johnnes convictioun, to caus pronounce and execute Dome and Sentence of Death aganis him, accoirding to pe ordinance of our Lawis maid for pwneischment of suche offenderis. In which behalf, and for performeing of pe whole premisses, these fall be to yow ane Warrant sufficient. GEVIN at Whytehall, the 26th of Januar, 1617.

THE JUSTICE Ordanit the said Johnne Guthrie, *alias* Laird, to be tane to ane gibbet, befyde the croce of Ed^r, and thair to be HANGIT quhill he be deid ; and all his moveable guidis to be escheit and inbrocht to his Maiesteis vse, &c.

[*Archibald Earl of Ergyle, Justice General ; Mr Alex. Coluile, his depute.*]
Slaughter.

Jul. 16.—JOHNNE KIRKPATRIK, seruand to Mr Walter Kynnynmonth of Callinche (Kilduncane.)

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Andro Kynnynmond, sone to Daid Kynnynmond of that Ilk ; committit vpone the tent day of Junij last-bypast, viz. The said Johnne being in companie with Mr Walter Kynnynmond, appeirand of Kilduncane, his maister, Jedione Kynnynmond, brother to the said Mr Walter, Patrik Kynnynmond, sone to the said Mr Walter, Hew Dik, seruand to the said Mr Walter, Thomas Fentoun, messinger citiner¹ in St Androis, Thomas Fentoun, his sone, thair, Johnne Clelland, and . . . Clelland, sones to Robert Clelland of Fermlaw, and . . . Broun, citiner of St Androis, with convocatioun of his Maiesteis leiges, to the number of tuentie persones, or thairby, all bodin in feir of weir, with fuordis, daigeris, plait-flevis, hagbutis, and pistolettis, expresse prohibeit to be borne, worne, vsed, or schote with, be the Actis of Parliament ; haifing confauet ane deidlie feid, rancour, and malice aganis the said vmq^{le} Andro, vmbeset² his hie way and passage, vpone Cires-mure, ane myle or thairby fra the burch of Couper ; quhair he, being only accompaneit with ane seruant of his awin, war, in sober and quyet maner, for the tyme, cuming furth of the hie way, lipning for na harme, &c., and thair set vpone the said vmq^{le} Andro, schot him throw the body with hagbutis, and crewallie hurt and demanit³

¹ Citizen ; inhabitant ; probably inferring that he was not a free *burgess*.
'waylaid.'

³ Abused. Literally, treated ; used.

² Beset ; blockaded ;

him and his feruand with fuordis, in dyuerse pairtis of thair bodeyis, to the effusioun of thair bluid in grit quantiteis : Off the quhilkis (woundis) and hurtis gevin to the said vmq^{le} Andro, he immediatlie deceiffit, &c.

VERDICT. The Assyse, be pluralitie of voittis, ffand, pronuncet, and declairit the said Johnne to be ffylet, culpable, and convict of airt and pairt, &c.

The Justice superceidis the pronunceing of Dome, &c.¹

[*Mr Alexander Coluile, Justice-Depute.*]

Child-Murder.

Jul. 24.—BESSIE DUNCANE, feruitrix to George Craig in Eifter Dudingstoune.

Dilaitit of the crewall and vnnaturall Murthour and putting to death of ane young infant man-bairne of hir awin, immediatlie eftir the beiring thairof, be putting it vnder the ftra of the bed quhairupone scho lay ; and thaireftir lying thairupoun, and smoiring² the said infant to deid : committit in ane bak hous of the said George Craigis, vnder nycht, vpone the fourtene day of Julij instant ; Williame Borthuik, sone to Johnne Borthuik in Waster Dudingstoun, ane young boy of xvij yeiris of age, being the father thairof.

The said Bessie, with teiris, in grit penitencie, confessit the Dittay to be of verritie ; and cravet God mercie for the samyn.

VERDICT. The Assyse, all in ane voce, be the mouth of Johnne Levingstoun, bailzie of Dudingstoun, ffand, pronuncet, and declairit the said Bessie, in respect of her awin Judiciall Confessioun, to be ffylet, culpable, and convict, &c.

SENTENCE. To be tane to ane gibbet at the mercat croce of Ed^r, and thair to be Hangit quhill scho be deid ; and all hir moveabill guidis and geir, gif scho ony hes, to be escheit, &c.

Falset—Forgery—Perjury.

Nov. 17.—MR JOHNNE MUREHEID, Notter in Tueidmouthe.

Dilaitit of airt and pairt of the formeing and wryting of ane fals nyntene-yeir Tak,³ and counterfuteing of vmq^{le} Johnne Nisbet of Swannisfeild his subscription thairto (allegit setter⁴ of the said Tak) eftir his deceise : And of periureing him self, in maner set down in his Dittay.

The pannell allegit that my lord Justice can nocht be Judge competent to him, in this matter ; becaus he (the pannell) is ane stranger, quha hes duelt and had his continuall residence out of this cuntrie within the toun of Tued-mouth, in Inghland, thir dyuerse yeiris bygane ; and thairfoir, conforme to the Act of Par-

¹ No farther entries occur ; so that it is probable a Remission was granted. suffocating.

³ A Lease for nineteen years.

² Smothering ;
⁴ The landlord or proprietor of the ground, who set it in Lease.

liament, aucht to be remandit fra this Judicatorie to the Justice of Ingland, at the leift, to the Bifchope of Dureham, within quhais diocie he duelt, the pannell being ane Ecclesiasticall perfone, fervand at the Kirk of Tuedmouth: And laft, he appaillis to his Maieftis mercie and clemencie; and offeris him felf in his hienes will, for the crymes contenit in the Dittay.

My lord Aduocat, for verificatioun of the Dittay, producet the pannellis Depositiones, with the fals Tak, quhilk is fund to be ffals and ffengeit befor the Lordis of Seffion, and in respect thair of ordainit to be cancellat and diftroyit: And anfuerand to the allegiances maid be the pannell, fayis, that nochtwithftanding thair of, he aucht to be put to ane Affyfe, in respect the Act of Parliament allegit, is only in fauouris of fic perfones as duellis in Ingland, and being citet for flauchter, thift, burning of houffis, and vtheris crymes, perticulerlie expreffit thairin, quhair of the cryme lybellit is nawayis comprehendit, and ar fugitiue thairfoir; and the pannell, cuming willinglie to this cuntrie to beir witneffing in ane matter betuix tua Scottis perfones, was nawayis fugitiue: And as to the privilege of his profeffion, that he is ane Ecclesiasticall perfone, fayis that the famyn aggrages his offence: And thairfoir, fould be juftlie puneift for the ffalfet and Periurie confeffit be him and contenit in his Dittay.

THE JUSTICE, nochtwithftanding of the pannellis allegiances, Remittis him to the tryell of ane Affyfe.

ASSISA.

Eduard Johnneftoun, Proveift of Annan,
Johnne Ramfay, mercheand burges of Edr,

James Douglas, bailzie of Dalkeith,
James Nafmyth of Poffo.¹

VERDICT. The Affife, all in ane voce, be the declaratioun of Eduard Johnneftoun, chancellor, ffand the faid Mr Johnne to be ffylet, culpable, and convict of the fforgeing and fformeing of the faid fals Tak; and of counterfuteing of the faid vmq^{le} Johnne Nifbetis fubfcriptioun thairto, eftir he was deid; and Periureing of him felf, in maner fpecifeit in his Dittay.—SENTENCE. To be tane to the mercat croce of Edr, and thair vpone ane gibbet to be Hangit quhill he be deid; and all his moveabill guidis to be efcheit, &c.

Usurpation of the King's Authority—Namesucken, &c.

Jan. 9, 1618.—THOMAS MELDRUM of Idene,² Walter Grant, his fervand, James Grant in Tulliebo, his brother, and Johnne Roifs, alfo his feruand.

Dilaitit of Vfurpatioun of our fouerane lordis authoritie, in cuming, vnder filence and clud of nycht, to Johnne Meldrum of Ordley his duelling hous of

¹ The remainder are 'mercheandis in Edr.' George Drummond of Cattifelbok (*Cat's-elbow*), Mr Johnne Rutherford, Proveift of Jedburgh, and six others, were each 'vnlawit in pe pane of ane hundredth merkis,' for not passing on the said Assise.

² See Nov. 20, 1618, &c.

... , and thair, be way of Hamefucken, clymming the walls thairof, turring¹ he ruif of the chalmer quhair he lay bedfast, nocht weill convaleffit of ane fever quhairwith he was afflictit and viffeit, be the space of tuentie foure oulkis ofbefoir : And for taking of him furth thairof, and cayreing him as ane captiue and priffoner to the place of Idene, quhair he was detenit in privat and strait priffone, be the space of foure dayis and foure nychtis ; vrgeing him, all that tyme, to discharge certane actiones quhilk he had depending aganis the said Thomas : And for the haill remanent crymes contenit in the Letteris : Committit vpone the aucht of Maij, 1612 yeiris.

PERSEWAR, Johnne Meldrum of Ordley, Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord, for his hienes intreis.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Thomas Nicolfone, Mr James Lawtie.

THE JUSTICE, for obedience of the Warrant of the Counsell, direct to him, subfcryuit be my Lord Chancellor, continewis this dyet to the xvj instantis : And Ordanis the pannell to find caution for thair compeirance that day, vnder the panis contenit in the Actis of Parliament.—Patrik Meldrum, ffear of Idene, become fouertie for the said Thomas, his father, &c.

(Jan. 16.)—Continued, by Warrant of the Secreit Counsell, to the xxj instant.

(Jan. 21.)—The Justice, of consent of pairtie, continewis this matter to the thrid day of the nixt Justice-air of Aberdene, or foner, vpone xv dayis wairning. George Seatoun of Schettin and the said Patrik Meldrum become pleges and fouerteis, coniunctlie and feuerallie, &c.

[*Mr Alexander Coluile, Provost of Kilmondy, Justice-Depute.*]

Slaughter—Convocation of the Lieges, &c.

Jan. 14.—WILLIAME JOHNNSTOUN, callit of *Lokerbie* ; Archibald J., his brother ; Mungo and Hercules J., fones to the said Williame ; Williame J., fone to vmq^{le} George J., in Lokarbie ; Williame J., in Grenesfyde ; Thomas Harknes, in Lokarbie ; Johnne Chalmer, thair ; Andro Chalmer, thair ; Johnne Johnnestoun, fone to David J., in Cleuchheid ; Williame J., in Auldwallis ; Patrik J. of Mylnebank, his brother ; Johnne J., in Turmour, callit of *Lokarbie* ; Andro J., his fone ; Archy Halyday, in Turmour ; Andro Chalmer, thair ; Johnne Bell, in Lokarbie ; Francis Bell, thair ; James Kennydie, in Bektoun ; Andro Chalmer, in Dames.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Johnnestoun, in Kirktoone ; committit with convocation of our fouerane lordis leigis, vpone the

¹ Forcing a passage, by breaking through the roof. Fr. *tirer* ; and A. S. *tyr-an*, to tear.

xxv day of April, 1617, be geving to him of dyuerse crewall and deidlie woundis in the heid, left airme, left hand, and left pape :¹ Off the quhilkis he nevir conualeffit, speciallie of the woundis reffaut in his heid, threfcoir and nyne banes being tane furth thairof ; and at laft, vpone the first day of December laft, he deceiffit, being vnder cure of the faidis woundis fevin monethis and ten dayis of befoir.

PERSEWARIS, Agnes Johnneftoun, the relict, Sir Williame Oliphant of Newtoun, kny^t.

PRELOCUTOURIS in defence.

Mr Thomas Nicolfone, Mr Alexander Peiblis, Mr James Oliphant, Adame Cuninghame.

The Juftice, of confent of pairtie, continewis this dyet to the xxv of Februar nixt, and Ordanis the pannell to find caution for thair entrie that day, vnder the panes contenit in the Actis of Parliament : Quha for obedience of the faid ordinance, ffand James Johnneftoun of Waftrow, and Archibald Douglas of Kelheid, brother to my lord of Torthorrell, bayth perfonallie prefent, cautioneris and fouerteis, conjunctlie and feuerallie, for thair re-entrie, &c.

(Feb. 25.)—Compeirit Mr James Oliphant, and producet ane Warrant of the Lordis of Secreit Counfell, procuret be the (faidis) perfones (on pannel), daitit the xix day of Februlare instant, be the quhilk the Juftice is ordanit to continew this dyet to the xxvij day of Marche nixtocum, &c. Which defire was granted ; Robert Johnneftoun of Raecleuch becoming cautioner for the pannels' entry.

PERSEWAR, Andro Johnneftoun, as fone.

PRELOCUTOUR in perfute, Sir Robert Gordoun of Lochinvar, kny^t.²

(Mar. 27.)—It is declairit be the pannell, befoir thai cum to thair allegiance, be way of informatioun to the Juftice, that it wald pleis his Lordfchip vnderftand, that the matter fell furth eftir this maner. My Lord of St Androis that now is, being Archebifchope of Glesgow for the tyme, haifing ane cair to haif the haill Kirkis within his dyocie³ fufficientlie plantit ; and eftir vizitacioun, cuming to the Kirk of Dryfdaill, quhair it was fund be him that the watter of Dryfe ran fa violentlie, eftir ane fpeat,⁴ throw the haill kirk yaird and landis adjacent thairto, that the Kirk it felff was liklie to becum ruinous and decay, except the courfe of the faid watter had bene divertit and drawin ane vther way thairfra : For remeid quhairof it was aggreit, with confent of the haill gentilmen of the parochin, that the faid watter fould be divertit ane vther way ; and accoirding thairto, it was appointit, that vpone the faid xxv day of Apryle, the faid Williame Johnneftoun, with affiftance of the parochin, fould cum, with fpaidis and fchuiles, to mak ane watter-gang : In the doing quhairof, the faid vmq^{le} James Johnneftoun, with his fones, come bodin in feir of weir, and maid interruptioun to the perfones foirfaidis that war cafting the faid watter-gang, and invalidit and perfewit dyuerse of the perfones that war working, for thair flauchter ; be occafioun of the quhilk

¹ Breast.

² These in addition to the persons abovenamed.

³ Diocese.

Flood

perfute and invasioun ane straik was gevin to the said vmq^{le} James vpone the heid with ane spaid or schule, be quhat persone the pannell knawis nocht: Eftir the quhilk straik he convaleffit, and was at tua feuerall Justice-Courtis in Jedburgh; was also at the Parliament in Ed^r; raid in dyuerse pairtis of the cuntrie, and within Ingland; and thaireftir, fell seik of ane fever, quhair of he deceiffit; as is nottour to the haill cuntrie.

Quhilk being premitit,¹ it is allegit peremptourlie for the pannell, that thay can nocht be put to ane Assyse for the cryme lybellit, in respect the said vmq^{le} James Johnnstoun, for quhais slauchter thai ar persewit, was flane at the horne, and deceiffit vnrelaxit thairfra, ffor ane criminall cause, viz. ffor airt and pairt of the Slauchter of vmq^{le} Hew Dowglas of Dalvene. *Igitur*, &c.—To the quhilk it is anfuerit be the persewaris, that the allegiance aucht to be repellit, because the said vmq^{le} James was relaxt fra the said Hoirning: And producet the Relaxatioun for verificatioun thair of.²—It is duplyit be the pannell, that the Relaxatioun producet meittis nocht the Hoirning; becaus the said vmq^{le} James Johnnstoun is relaxt fra the horne lang eftir the tyme lybellit of the straikis gevin to him quhair of he deceiffit, to wit, lang eftir the xxv day of Apryle, 1617, he nocht being relaxit quhill the xxviij of October thairefter.—To the quhilk it is anfuerit be the persewaris, and allegit,³ that the Hoirning quhair-upoun the said allegiance is foundit is null, becaus the said vmq^{le} James Johnnstoun being designet be the said Letter of Hoirning to haif ane certane duelling-place, viz. in Twnnnergathe, the tyme of the raising thair of, he is nather charget personallie nor at his duelling-place, quhilk aucht to haif bene done; he being ane Scottis subiect, duelland within Twnnnergath, quhair he duelt the tyme of the geving of the charge to him, be oppin proclamatioun; lykas, he duelt thairin dyuerse yeiris of befoir.—It is anfuerit be the pannell aganis the allegiance, foundit be the persewaris vpone the nullitie of the Hoirning, that the said allegiance aucht to be repellit, in respect of the privilege and Dispensatioun set down in the Letteris of Hoirning producet, quhilk sustenis the charge gevin to him, be oppin proclamatioun at the croce of Dumfreis, to be als lauchfull as gif he war charget personallie or at his duelling-place, for the ressonne specifit in the Letteris.

It is allegit be the persewaris, as to the Relaxatioun and allegiance maid thairupoun, that the said Relaxatioun is lauchfull and sufficient in the selff; becaus the samyn is purchest be the said vmq^{le} James, and he lauchfullie relaxt, be vertew thair of, lang befoir his daithe.—The pannell repeittis thair former anfuer.

¹ Premised.

² On margin, '1 Aprilis, 1618. This Relaxatioun gevin vp agane to Andro Johnnstoun, producer thair of.'

³ Pleaded; urged as a plea.

It is ffordir allegit be the pannell and thair prelocutouris, that thai can nocht be put to ane Affyse for the cryme lybellit, becaus the said vmq^{le} James Johnnstoun was flane and deit at his Maiesteis horne ffor ane criminall cause, viz. ffor the steilling of tua horse pertening to James M^cmathe in Knokinhair; committit be him in the moneth of September, 1597; ffor the quhilk, being persewit criminallie befor the Justice, and charget to vnderly the Law within the tolbutth of Ed^r, vpone the xxj day of Januar, 1607 yeiris, was, for nocht finding of caution, denuncet and declairit fugitiue fra his hienes lawis for the said cryme: And ffor verificatioun thair of, producet the Extract of the Hoirning.—To the quhilk it is ansuerit be the persewaris, that the Summondis and Dittay aucht to pas to ane Affyse, nochtwithstanding of the allegeance proponit be the pannell, foundit vpone the tua criminal Hoirningis producet; becaus the said vmq^{le} James Johnnstoun of Kirkcaldy was nocht only relaxt fra the first Hoirning befor his deceis, bot also becaus it is speciallie provydit be Act of Parliament, maid in the moneth of October, 1612 yeiris, that all persones duelland vpone and within the boundis of the lait Bordouris of this kingdome, speciallie within the boundis of the scherefdom of Dumfreis and stewartrie of Annandall, quhair the said vmq^{le} James duelt, ar fred and relevit of all and quhatsumevir criminell caussis that could be laid to thair charges, ffor quhatsumevir ffyre-raisingis, slauchteris, thiftis, and stouthes, or vther criminall caussis quhatsumevir, befor his Maiesteis going in Ingland, quhilk was in Apryle, 1603 yeiris, &c.

THE JUSTICE continewis Interlocutour, vpone the allegeances foirfaidis, to Wednisday nixt. The Affyse wairnit *apud Acta*, ilk persone vnder the pane of ij^c merkis. Williame Douglas, younger of Caschogill, become fouertie for the entrie of the hail persones on pannell, &c.

(Apr. 1.)—THE Justice, be directioun of the Lordis of Secreit Counfall, Ordanis the persones on pannell to find caution for thair entrie and compeirance of new agane, befor the Justice or his deputis, the thrid day of the nixt Justice-air of the scherefdom or stewartrie quhairin thay duell; or soner, quhan or quhair it fall pleis his Maiestie, vpone xv dayis wairning, &c. Williame Douglas of Caschogill pleige and fouertie, &c.

Inbading—Hurting and Wounding—Slaughter.

Feb. 13.—HEW FALCONER of Innerlochtie; Hew Falconer, his sone; Frances Hay and Alexander Hay, sones to Williame Hay of Mayne; Thomas Grant, brother to James Grant in Daltulleis; Lauchlane Grant of Wester Elcheis; Johnne Grant, his sone.

Dilaitit of airt and pairt of the invaiding, hurting, and wounding of Thomas Grant of Cardellis, and slauchter of vmq^{le} Patrik Grant, his sone; committit within the burgh of Elgyn, the xj of November last, 1617.

PERSEWARIS, Thomas Grant of Cardellis, as father; Johnne Grant, appeirand of Cardellis, as brother; Sir Williame Oliphant of Newtoun, knycht, for his Maiesteis intreis.

THE JUSTICE, of consent of ather pairteis, and accoirding to ane directioun gevin to his lordschip be the Lordis of Secreit Counfall, continewis this matter to the thrid day of the nixt Justice-air of the scherefdom quhair the defenderis duellis, (Elgyn,) or soner, vpone xv dayis wairning, &c.

Sir Alexander Gordoun of Clwnie, kny^t, become fouertie for the said Thomas Grant, vnder the pane of tua thowseand merkis; Sir Alexander Falconer of Halkertoun, kny^t, become fouertie for the said Hew Falconer and his sone; James Hay, appeirand of Mayne, become fouertie for Frances and Alexander Hayis, his tua brether; and Robert Innes of Balvany for Lauchlane and Johnne Grant—all vnder the panes contenit in the Actis of Parliament.

Slaughter.

Mar. 18.—WILLIAME JOHNNSTOUN, callit of Lockerbie, and Johnne Carrutheris of Rammerfcaillis.

Dilaittit of airt and pairt of the Slauchter of vmq^{le} Cristopher Wigholme,¹ burges of Sanquhar; committit in Junij, 1594.

PERSEWAR, Niniane Wigholme, as sone; Sir Williame Oliphant, knycht.

PRELOCUTOURIS in defence, Mr James Oliphant, Adame Cuninghame, Aduocattis.

The persewar passis fra the persute of the said Johnne Carrutheris *pro loco et tempore*.—It is allegit for Williame Johnnstoun, that he can nocht be put to the knowlege of ane Affyse for the crymes lybellit, in respect his Maiestie and Estaittis, be Act of Parliament, maid in October 1612, hes, for the resson mentionet thairintill, geving ane generall pardoun to all maner of persones duelland within the boundis of the lait Bordouris of this Kingdome, for all maner of crymes committit be thame preceding his Maiesteis going in Ingland, &c.—To the quhilk it is anfuert, that the allegiance aucht to be repellit, in respect of the summondis beiring the fact lybellit to be persewit be the pairtie, with concurse of his Maiesteis Aduocat; quha is speciallie exceptit in the said Act, and hes power, be vertew thairof, to persew.

THE Justice continewis Interloquitour to Fryday nixt; and Ordanit the pannell to find caution for his compeirance, as also for the entrie of his brother, the said day.—Robert Somerwell of Smailhomes become fouertie, &c.

(Mar. 20.)—THE JUSTICE ordanit caution to be ffund, that the said Williame and Frances fall compeir befor the Justice or his deputis, the thrid day of the Justice-air of the scherefdom or stewartrie quhairin thay duell, or soner, vpone xv dayis wairning.—Robert Somerwell of Smailholme, and Williame Johnnstoun of Currielaw, become pleges and fouerteis, &c.

¹ This name is now written *Wigham*, and *Whigam*.

Slaughter.

Mar. 18.—ROBERT SYMMER, sone to the Laird of Balzordie.

Dilaittit of the crewall Slauchter of vmq^{le} Dauid Graham, sone to vmq^{le} James Grahame of Leuchland; committit vpone the xxix day of Apryle, 1616 yeiris, vpone the Hauche of Infche, neir to the Mekill-mylne of Brechin, be streking him throw the body with ane rapper-fuord; quhairof, within sex or sevin dayis thaireftir, he deceiffit.

PERSEWER, James Grahame, as brother to the defunct; James Keith of Harviestoun, brother-in-law; Sir Robert Grahame of Morphie, neir kinsman; Sir Williame Oliphant of Newtoun, kny^t.

PRELOCUTOUR in defence, Mr George Symmer.

The pannell, being accuset be Dittay, of the slauchter of the said vmq^{le} Dauid Grahame, denyis the samyn, with the haill circumstances set down in the Dittay, concerning the said slauchter.

ASSISA.

Dauid Lyndsay, in Brechin,	Dauid Gairdin of Lawtoun,	Johnne Cob, citiner of Brechin,
James Ramsay, thair,	Patrik Guthrie of Kinblakmonth,	Williame Carnagy, skynner, burges
Johnne Vdny of Kethik,	James Halyburtoun, mercheand	of Edinburghe,
James Smyth, in Brechin,	burges of Edinburghe,	Williame Ruthvene of Bandane,
Andro Thomesoun, thair,	Johnne Peter, wryter, burges thair,	Williame Elder, tailzeour, burges
Johnne Anderfoun, burges of	Laurence Heiring, brother to	of Edinburghe.
Montrois,	Lethindie,	

VERDICT. The Assyse haifing reffonit and voittit vpone the pointis of the said Dittay, and being ryplie and at lenth advyset thairwith, togidder with the Letteris of Hoirning producet be his Maiesteis Aduocat, beiring the said Robert to haif bene denuncet rebell in Maij, 1616, for nocht finding of cautioun to haif compeirit befor the Justice to haif vnderlyne the Law for the said slauchter; ffor the quhilk fact, he hes bene fugitiue and furth of the cuntrie senfyne; togidder with ane Commissioun, and vther probatioun producet also be his hienes Aduocat, for instructing the said Dittay—thay all in ane voce, be the mouth of the said Johnne Vdny, chancellor, fand the said Robert to be FYLET, culpable, and convict of the said Slauchter.

SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair his heid to be strukin frome his body; and all his moveabill guidis to be escheit, &c.

Intercommunung with the Clan-Gregor.

Mar. 18.—COLENE BRUCE, sumtyme duelland in the Middilhauch of Huntingtour.

Being brocht furth of the Tolbuth or Waird-hous of Edinburgh, quhairin he hes bene wairdit thir dyuerse monethis bygane, and presentit vpone pannell, be direction of the Lordis of Secreit Counfall, to heir and fie the dome vnder-writin pronuncet aganis him, as he that became in his Maiesteis will ofbefoir,

ffor the affisting, reffett, fupplie, and intercowmoning with THE CLANGREGOUR; and accoirding to his Maiefteis will than publeift and declairit, vpone the fext day of Auguft, 1605, was ordanit to be Banifchet his Maiefteis haill dominiones, nevir to be ffund agane within the famyn, vnder the pane of deid, for the faid cryme.—(See this Collection, II. p. 457.)

SENTENCE. The Juftice of new agane, conforme to ane Warrant and delyuerance of the Lordis of Secreit Counfall, fubfcryuit be my Lord Chancellor, and be my Lord of Mar, Grit-Thesaurer, daitit the xvij day of Marche instant, Ordanit the faid Colene Bruce to be Banifchet, as ofbefoir, his hienes haill dominiones, and nevir to be fund within the famyn, vnder the pane of deid, but forder fauour: Lyk as, to be returnet bak agane to the faid waird be the Magiftratis of Edinburgh, to be keipit be thame thairin, in fure firmance and captiuitie, vnto the tyme a Schip be prepairit, quhairin he may be tranfpoirtit.

Slaughter at a Funeral.

Jun. 10.—JOHNE JOHNNESTOUN of Tunnergathe; Blench Bell, his fpous ('*paft fra*'); Johnne, *alias Joh*, Williame, ffances, and James, four fones to the faid Johnne; James Johnneftoune; Andro Johnneftoune, in Kirkton; Williame, ffencie, and George, his thre brether; David Bell, callit of Craighous; Williame Johnneftoune, in Hilbank; Johnne, his brother; Williame and Johnne Johnneftoune, in Schaw; Williame J. in Hilbank; Johnne, his brother; James Johnneftoun, in Hill ('*paft fra*'); Patoun Bell, in Yle ('*paft fra*'); Jok Burges, in Kirkhouffes ('*paft fra*'); Jok Johnneftoune, in Foulraw ('*paft fra*'); James Johnneftoune, fone to Twnergathe; ffances J. in Myreheid; James J. in Court; James Bell, in Twnergathe ('*paft fra*'); Johnne Bell, in Holmheid ('*paft fra*'); George Johnneftoune, fone to Johnne Johnneftoune of Twnergathe.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Frances Johnneftoune, brother-germane to Williame Johnneftoune of Lockerbie; committit vpone the xxj day of Apryle laft, at the Buriall of Thomas Johnneftoun, 3ounger of Fingland, befyde the Kirk of Twnergathe, and zaird thair of.

PERSEWARIS, Williame Johnneftoune of Locherbie, brother; Sir Williame Oliphant, kny^t.

James Johnneftoun of Waftrow became fouertie for the entrie of James of the Hill, the thrid day of the nixt Juftice-air of the fcherefdome quhair he duellis; or foner, vpone xv dayis wairning.—Johnne J. of Twnergath, fouertie for the entrie of Patoun Bell, Jok Burges, Jok J. of Foulraw, and James Bell of Twnergathe.—And Johnne Carmichell in the Maynes, fouertie for the entrie of Johnne Bell in Holmeheid.

THE JUSTICE, of consent of the perfewaris, continewis this dyet aganis the remanent perfonis nocht *paft fra*, to the fevint day of Auguft nixt; and Ordanis thame to ffind fouertie for thair entrie that day.

James Gordoun of Buithill, brother to Lochinvar, fouertie for the entrie of

Johnne of Twnergathe and his fones—Johnne of T. fouertie for Frances of Myreheid, &c.—Johnne Gordoun of Hiffilfeild, for Andro J. in Kirktown, &c.

(Aug. 7.)—The Justice, of consent of pairtie, continewis this dyet to the xvijj of November nixt.—Niniane Johnnestoun of Powdene, cautioner for Twnergathe and Andro J. of Kirktown—and thay, conjunctlie and severallie, for the entrie of the remanent persones.

(Nov. 18.)—Continued to the thrid day of the nixt Justice-air of Dumfreis, or foner, vpone xv dayis wairning.

Slaughter at a Funeral.

Jun. 10.—JAMES JOHNNSTOUN of Wastraw; William J. of Locherbie; Archibald, his brother; Nicolas Cairleill, spous to the said Williame ('*past fra*'), and others.¹

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Andro Johnnstoun, sone to Johnne Johnnstoun of Twnergathe; and Slauchter of vmq^{le} Johnne J., brother-germane to Andro J. of Kirktown; committit the xxj day of Apryle last, within the Kirk-zaird of Tounergathe, at the Buriall of Thomas Johnnstoun, 3ounger of Fingland.

PERSEWARIS.

Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our souerane lord; Johnne Johnnstoun of Twnergathe, as father to the said vmq^{le} Andro; Johnnstoun of Kirktown, as brother to the said vmq^{le} Johnne.

The same procedure takes place in this case as in the preceding; and is finally, on Nov. 18, continued to the Justice-air of Dumfries, &c.

Rape—Forcing and shamefully Abusing, &c.

Jun. 17.—MR DAVID WEDDERBURNE, indueller in Dundie, and Andro Cryftie, indueller in Leith.

¹ The other pannels follow :—Mungo Johnnstoun, sone to the said Williame; Williame J., brother-sone to the said Williame of Locherbie; Andro Chalmer, in L. ('*past fra*'); Johnne C. and Andro C., his tua fones, thair ('*past fra*'); Williame Brydane, in Gymmenbie ('*past fra*'); Mathow Brydane, thair ('*past fra*'); Heckie Johnnstoun, thair ('*past fra*'); Andro Grahame, in Locherbie; Williame Grahame, in Westwoid ('*past fra*'); Hercules Johnnstoune, in Locherbie; Margaret J., wedow, in Nitholme ('*past fra*'); Williame Kennedie, 3ounger of Hallaithes; Johnne K. of Hallaithes ('*past fra*'); Johnne Chalmer, in Studrigis ('*past fra*'); Thomas Harknes, oistler in Locherbie; Johnne Johnnstoun of Turmour, callit of Locherbie; Dorathie J., his spous ('*past fra*'); Andro J., his eldest sone; Andro J., brother to the said Johnne of Twrmour; Williame J., also his brother; Johnne Bell, his servand ('*past fra*'); Thomas J. of Fingland; Johnne J. in Burfs, callit of Fingland; Johnne J., callit *Gawinis Johnne*; Gib Mundell, in Lairdholme ('*past fra*'); Adie Blaiklok, thair, callit of Birkay ('*past fra*'); Hercules J., callit *the Bastard*, in Locherbie; Johnne J., sone to Williame J. of Auldwallis ('*past fra*'); George J. in Mylnebank; Johnne J., sone to David J. of Cleuch-heidis; Mungo Kennydie in Aftork; Andro Irwing, alias Myller, in Wyliehoill ('*past fra*'); Mathow Thorbrand, thair ('*past fra*'); Williame T., thair ('*past fra*'); James Grahame, in Quhytestanehill ('*past fra*'); Thomas Manekstoun, in Midge-bray ('*past fra*'); David M., thair ('*past fra*'); Symone Hall, thair ('*past fra*'); Johnne Corrie, in Preiftbuttis; Gawin Smyth, thair; Thomas Johnnstoun, callit *Geordeis Thome*, thair; Johnne Kennydie of Hallaithes ('*past fra*').

Dilaitit of the Foirceing and schamefull abuseing of Jonet Crambie, dochter to vmq^{le} George Crambie, burges of Bruntieland, and Jonet Broune, hir mother; committit within the dwelling-houfe of Alexander Anderfone in Bruntieland, vpon the xxvj day of Marche laft.

PERSEWARIS.

Jonet Brown, as mother to the faid Jonet Crambie; Sir Williame Oliphant of Newtoun, kny^t. PRELOCUTOURIS in defence, Mr Thomas Nicolfoun, Mr Vmphra Blindschell, Mr Johnne Ruffell.

It is allegit be the pannell and thair prelocutouris, that na proces can b grantit in this matter, nather can thai (be) put to the knowlege of ane Affyfe for the cryme lybellit; becaus the faid Jonet Crambie, speciall pairtie perfewar, to quhome the allegit cryme is done, is nocht present to perfew thame for the famyn.—It is anfuerit be my lord Aduocat, that the allegeance aught to b repellit, in respect that the mother is present, and is reddie to perfew, quha is fufficient; or ony of the kyn and freindis to perfew, with concurrence of his Maiefteis Aduocat.—It is replyit be the pannell, that the mother is only for her (awin) intereis; quha can nocht perfew thame for the allegit cryme, t pairtie allegit offendit being on lyfe.—It is anfuerit, that the allegeance aucht to be repellit, in respect of the former anſwer.

The pannell defyres the mother to be folemnelie fuorne, vpon the verritie of the Dittay, befor thai cum to thair defence.—The mother refuifes to geve her aith vpon the Dittay, as it is qualifeit, in respect ſcho was nocht present; bot declairis that hir dochter paſt faif and haill furth of hir hous; and come bak agane to hir hous ſchamefullie abuſet, &c.; quha than repoirtit to hir that ſcho was forcet be the pannell, in maner ſpecifeit in the Dittay.—The pannell takis instrumentis, that the mother refuiffing to ſweir; and proteſtis for remeid of law, for thair ſchamefull ſclander.

THE JUSTICE Ordanis the pannell to find caution for thair compeirance the thrid day of the nixt Juſtice-air of the ſcherefdom quhairin thai duell,¹ or ſoner, vpon xv dayis wairning, to vnderly the law for the famyn, vnder the pane of I^m merkis for ilk ane of thame.—Mr Johnne Elphinfoun, indueller in Leith, become fouertie for the faid Andro, vnder the pane of I^m merkis. Andro Watfone, bailzie and burges of Bruntieland, become fouertie for the faid Mr David, vnder the faid pane.

Slaughter.

Jun. 20.—JAMES STEWART, ſone to vmq^{le} Johnne Stewart of Kilpatrik.

Dilaitit of the cryme following, viz. fforſamekill as, he haifing conſauet ane deidlie ffeid, rancour, and malice aganis Andro Cuninghame in Belliemichell, in

¹ Forfar and Edinburgh.

Arrane, in the moneth of Maij last, come bodin in feir of weir,¹ with ane fuord and vther wappones, *inuafue*, to the faidis Landis of Belliemichell, of purpois to haif darnet² himself in the brome,³ neir to the faid Androis hous, thair to haif murthouret him: In his cuming to the quhilk brome, being espyit be ane Jerveise, fervand to the faid Andro, quha was addresssing him self in to the faid Androis hous, to geve him adverteisment of the faid James being thair; the faid James followit the faid Jerveise, and befoir he could cum to his maisteris hous, ouertuik him, and with ane fuord strak him in the bellie, and flew him thairwith.

The pannell confesses the Slauchter of Jerveis; and offeris to satisfie the pairtie and the Kingis Maiestie for the samyn, seing nane persewis him bot his Maiesteis Aduocat, for his hienes intreis.—The Aduocat takis instrumentis of the pannellis confessioun of the cryme.

VERDICT. The Assyse, be the mouth of Mr Donald Campbell, chancellor, all in ane voce, in respect of the faid James Judiciall Confessioun, fand and declairit the faid James to be ffylet, culpable, and convict of the Slauchter of the faid vmq^{le} Jerveis.—SENTENCE. To be tane to the Castle-hill of Edinburghe, and thair his heid to be strukin frome his body; and his haill guidis and geir to be escheit, &c.

Theft.

Jul. 2.—GILBERT ELLOTE, callit *Gib the Galzart*.⁴

Dilaitit of the thiftious steilling of ane purse fra Johnne Airmestrang, callit of the Holme, vnder silence and clud of nycht, within the duelling hous of Alexander Young in Selkirk, in the moneth of Maij last, be taking the faid purse, with ffourtie pundis being thairin, furth of the faid Johnne Airmestrangis breikis, in maist thiftious maner; and drinking of ten merkis of the money that was thairin; and abstracting the rest of the ffourtie pund, vnto the tyme the samyn was challanget vpone him, and restoirit bak agane thaireftir to the faid Johnne Airmestrang, awner thairof.

The pannell declairit that he nawayis staw⁵ the purse, in maner specifeit in the Dittay; bot allanerlie, that he being in Alexander Youngeis hous, in Selkirk, ryseing in the moirning, fand the purse vpone the fflure of the chalmer; quhilk he retenit, and spendit of the money that was thairin ten merkis allanerlie,⁶ in recompance to the faiffer;⁷ and restoirit the faid purse, with the rest of the money

¹ Furnished in warlike manner.

² Concealed; hidden.

³ Broom; *planta genista*.

⁴ 'William Johnstone of Wamphray, called *the Galliard*, was a noted freebooter. His *nom de guerre* seems to have been derived from the dance called *the Galliard*. The word is still used in Scotland to express an active, gay, dissipated character.'—*Border Minstrelsy*, i. 230. It is right, however, to inform the reader, that this *sobriquet* was very prevalent on the Border.

⁵ Stole.

⁶ Only.

⁷ Salvage money, and for restoring what was lost.

being thairin, to the said Johnne Airmstrang, sa fone as he vnderstuid the samyn pertenit to him; affirmeing, that the said Johnne Airmstrang wald nawayis infist aganis him for Thift.—The Aduocat anfueris, that his Declaratioun maid can nocht be respectit; bot he fould be put to ane Assyse, in respect of his depositioun maid be him, in presens of the Justice, confessing the steilling of the purse and money thairintill, in maner specifeit in the Dittay.

The Justice Ordanis him to pas to ane Assyse, nochtwithstanding of his former allegiance and Declaratioun maid be him thairintill.

VERDICT. The Assyse, be the mouth of Johnne Scott of Sundelishoip, chancellor,¹ for the maist pairt, fand, pronuncet, and declairit the said Gilbert to be ffylet, culpable, and convict of the away-taking furth of Alexander Youngis hous in Selkirk, of the said Johnne Airmstrang his purse, with ffourtie pundis being thairintill; quhilk purse was delyuerit bak agane to the said Johnne, and haill fowme aboue specifeit, except ten merkis thairof allanerlie: And Clanges him of the steilling of the samyn.—SENTENCE. To be SCURGET throw the burgh of Edinburgh; and also to be actit to be Banischet furth of this realme, and neuer to be ffund agane within the samyn, without his Maiesteis Licence, vnder the pane of deid, but fauour.

The said Gilbert actit himself to depairt furth of this realme, within xx dayis eftir the dait heirof; and nevir to be ffund agane within the samyn, without his hienes Licence, vnder the pane of deid.

Murder.

Jul. 8.—JOHNNE MENZEIS and Andro Menzeis, brether to Williame Menzeis of Castelhill; Raulff Dalzell at the mylne of Durisdeir, James Barbour in Colymme, Hectour M^cQuhynzie in Thornehill, Jonet M^cRone, spous to Johnne Williamfoun in Dufdeir, Johnne Williamesone hir spous for his intreis, Marioun M^cRone, sister to the said Jonet.

Dilaitit of airt and pairt of the crewall Murthour and Slauchter, vnder nycht, of Patrik Douglas, sone to Hew Douglas of Balliebucht; committit the fyftene day of Marche last, at the gavill of the said Johnne Williamfones hous, in Dufdeir, in his ganging furth of the toun of Dufdeir to the place of Moirtoun.

PERSEWAR, Hew Douglas of Belliebucht, Sir Williame Oliphant, kny^t.

PRELOCUTORIS in defence, Mr Thomas Nicolfoun, Mr Lueis Stewart, James King.

THE Justice, with consent of my Lord Aduocat, continewis this matter to the thrid day of the nixt Justice-air of the Scheref dome of Dumfreis, or soner vpone fyftene dayis wairning; and ordanis the pannell to find Cautioun for thair re-entrie to that effect.—The Laird of Dalzell, elder, and Williame Menzeis of

¹ The remainder are merchants and burgesses of Edinburgh.

Castelhill, become pleges for Johnne and Andro Menzeis—and Robert Douglas of Cafchogill for the entrie of Hectour M^cQuhynzie.

Slaughter—Demembration.

[THE Case which follows, affords one among numerous other instances, of the unhappy consequences resulting from the deadly feuds, which occurred almost daily; and strongly points out their prevalence in Scotland, to a very lamentable extent. *Sir James Balfour*, in his *Annales*,¹ states, that ‘*the Young Laird of Cultmalindie-Bruce*, in Perthshyre, killed *Toshohe Laird of Minewaird*, sifter sone to *Sir James Campbell of Lawers*, in the toune of Perth. *Cultmalindy*, the committer of the slaughter, fled.’ But *Fleming*, in his MS. Diary or Chronicle,² gives a much more minute detail of this affair, in the following passage, extracted from the Original MS. :—‘VPOUN Midfomer-day, the xx of Junij, 1618 yeiris, at twa efternoon, (*David*) *Toscheoch of Monivaird* younger flaine in the South-gait of Perth be *Lourence Bruce* younger of *Cultmalindeis*, his brother, and diuers thair affociates. The twa that was with *Monyvaird*, the ane deidlie hurt, bot deit not; the vther, his richt hand clene strukin fra him. This done in a moment of time. All the committeris thairof eschewit out of the towne, befoir any of the townis-men hard of ony fuche thing.’]

Jul. 29.—PETER BLAIR, brother-germane to Andro Blair of Gairdrum, Dilaitit of airt and pairt of the ffelloun and crewall Slauchter of vmq^{le} *Dauid Toscheoche*, 3ounger of *Monyvaird*; and Demembring of *Dauid Malloche*, his feruand, of his richt hand; committit within the burgh of Perth, vpone the xxiiij day of Junij laft.³

The said Andro (as cautioner for his brother) nocht compeirand nor enterand the said Peter, the Justice ordanit him to be in ane amerceament and vnlaw, viz. tua hundreth merkis: Lyk as, the said Peter was decernit, for his nocht compeirance, to be denuncet rebell and put to the horne, and all his moveabill guidis to be escheit, &c.

Slaughter—Demembration.

Jul. 29.—LAWRENCE BRUCE, appeirand of Cultmalundie; Alexander Bruce, his brother; Williame Oliphant of Gask; Laurence Oliphant his brother; Alexander Fleming of Monefs; Williame Douglas of Annatroche; Johnne New, fervand to my Lord Oliphant; Donald Paterfone, fervand to the Maister of Oliphant, and George Tyrie, messinger in Perth.

Dilaitit of airt and pairt of the above slaughter, &c.

Eduard Toscheoche, elder of Monyvaird, as ffather o vmq^{le} *Dauid Toscheoche*, 3ounger of Monyvaird, produced the Letters deulie execute and indorfate vpoun Peter Blair, brother-germane to Andro Blair of Gairdrum; be vertew quhairof the saidis Laurence, &c. ar denuncet rebellis and put to the horne, for nocht

¹ Orig. MS. Adv. Library.
1618, Nov. 17, 1619, Mar. 12, 1623.

² Orig. MS. preserved in Adv. Library.

³ See Dec. 4,

finding of caution for thair compeirance this day and place, in the hour of caus, to haif vnderlyne the law, &c. Vpoun the production of the quhilkis Letteris, the said Eduard, with Archibald Campbell, brother to the Laird of Laweris, askit instrumentis; and Protestit for releif of George Bischope of Orkney, cautioner.

Slaughter.

Jul. 29.—ALEXANDER HERVIE in Innerrowrie.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} George Robertstone, servand for the tyme to Patrik Con of Auchry; committit within the duelling hous of Thomas Chalmer in Turray, in anno 1599 yeiris, be streking him in the bellie with ane knyfe, quhair of he deceift.

PERSEWAR.

Alexander Soure, as brother on the mother syde, and servand for the present to the Laird of Skeane.

PRELOCUTORIS in defence.

Frances Erle of Errole, The Erle of Rothes, The Laird of Balquhane, (Johnne Leslie,) Mr Thomas Nicolsonne, Aduocat.

The persewar, with Mr Andro Skene, producet Hoirning aganis the pannell, quhairby he is denuncet vpone the xxv of Julij instant, for nocht finding of caution to compeir this day to vnderly the law for the said cryme; and thairupoun askit instrumentis, and protestit for his cautioneris relief, in respect na repourt was maid to the officer, of the finding of ony caution, quhairby ane Assyse mycht haif bene summond.—The pannell takis instrumentis of his entrie, and protestis for his cautioneris releiff: And as to the Hoirning producet, allegis the samyn is null, in respect caution was fund be him for his compeirance lang befor his denunciatioun, viz. vpone the xxij day of Julij of befor: And as concerning the Slauchter lybellit, he offeris him self to the tryell of the Law for the samyn, as altogidder innocent thairof, disassenting to all maner of continuatioun; and thairupoun askit instrumentis.

THE JUSTICE continewis this dyet to the secund of December nixtocum; and Ordanis the pannell to find caution for his entrie that day, vnder the panes contenit in the Actis of Parliament.

The pannell, for obedience of the Justice ordinance, ffand Jonnne Leslie, ffear of Balquhane, cautione for his compeirance befor the Justice or his deputis, the saidis day and place.—The said Alexander Hervie being fuorne, maid fayth that he dred¹ bodelie harme of Alexander Soure (Sowre), insafar as he had affirmet, in presens of dyuerse famous² persones, that ‘ gif he gat nocht his intent befor the Justice, that he fould wair³ his mother sone vpone him also!’ And thair-

¹ Dreaded; feared.

² Persons of good fame and credibility.

³ Literally, expend; i. e. that he would hazard his own life in his endeavour to be revenged of him.

foir, defyret Lauborrus of him.—The faid Alexander Soure declairit he had na cautione, becaus he was bot ane pur man; and offerit *cautionem juratoriam*.¹

THE JUSTICE Ordanit him ather to find caution and lauborrus for the indemnitie of the pannell, vnder the pane of ij^c merkis, or ellis to be tane to waird, to remane thairin quhill caution war fund.

Compeirit Mr Andro Skeane, and become fouertie and lauborrus for the faid Alexander Soure, that the faid Alexander Hervie fall be harmeles and skaythles of him in his perfone, landis, and guidis; and nawayis to be molestit or trubillit be him thairin, nor be na vtheris of his caufing, &c. vnder the pane of tua hundreth merkis.

(Jul. 30.)—Alexander Gourlay of Southane, in Fyfe, become plege, fouertie, and lauborris for Alexander Sowre, &c. Mr Andro Skeane relieved.

(Dec. 2.)—THE JUSTICE, in respect nane of the Affyse compeiris, continewis all tryell in this matter to the thrid day of the nixt Justice-air of the Scheref dome of Aberdene, &c.—Johnne Leslie, fear of Balquhane, become fouertie and lauborrus for the faid Alexander Hervie, that the faid Alexander Sowre fall be harmeles and skaithles of him, &c. vnder the pane of foure hundreth merkis.

Stealing of a Purse.

Jul. 30.—JOHNNE BROUNE.

Dilaitit of the steilling of ane purse, with xxij li. being thairin, in Carnewath mercat, vpone Mydsomer-day last, quhilk pertinit to James Walker, cordiner in Lynlythgow; and he being schortlie thaireftir challenget, made restitution of the faid purse and money bak agane to the faid James.

VERDICT. Convict of the steilling of the faid purse.—SENTENCE. To be Scurget throw the burgh of Edinburgh, and Brunt² vpone the cheik: And to be Banisheit his Maiesteis haill dominiones, speciallie this his kingdome of Scotland; nevir to be fund agane within the samyn, vnder the pane of deid, but³ fauour.

Forging of an infamous Pasquill against the Scottish Nation, &c.

[THE Case of MR THOMAS ROSS forms one of a series of sanguinary and barbarously vindictive acts of KING JAMES VI, which, unquestionably, must leave an indelible stain on his memory and character, as a despotic and cruel tyrant. It has already been frequently shown, in the course of this work, that whenever there occurred the slightest attack on his personal dignity, or any speech, lampoon, or other writing, at all infringing on his kingly prerogative, &c. his Majesty was relentless in the severity of the punishment, which he never failed to cause be inflicted on the luckless offender. As so many shocking Cases of this description have already been given in the present Collection, it is enough, without fatiguing the reader with any recapitulation, barely to refer him, among other cases of a

¹ Juratory caution.

² Burnt; branded.

³ Without.

similar nature, to the Trials of *Diksoun*,¹ Aug. 3, 1569; *Tennent*,² Oct. 10, 1600; *Cornuall*, Apr. 25, 1601; and *Fleming*,⁴ May 17, 1615; which are the leading instances of the insane and blood-thirsty spirit above alluded to.

With regard to *the facts* attending the case of Mr Thomas Ross, there seems to be no reason for doubting that they occurred almost exactly as they are narrated in the abstract of the Dittay, which has been preserved in the Books of Adjournal. In case, however, that this example should prove *infectious*, the Record informs us, that the offensive papers were ‘gevin vp agane to my lord Aduocat,’⁵ to be destroyed—‘as nocht worthie to remane in ane Register, to offend the earis or eyis of the posteritie!’ Every search has been made in the *Denmylne Collection* of MSS., and other Collections in the Advocates’ Library, the Warrants of the Privy Council of Scotland, and other similar sources, but no trace can now be had of the *Theses* and *Annexa*, which must have proved very interesting and curious at this distance of time.

In order that the reader may have an opportunity of judging for himself, the Editor has made every enquiry in his power, for the purpose of elucidating this disgraceful and sanguinary page of the personal history of ‘the British Solomon.’ *Sir James Balfour*⁶ gives the following account of this extraordinary tragedy. “THE 20 of August, this zeire, *Mr Thomas Ross*, a brother of the Houffe of *Cragie*, in *Perthshyre*, was sentenced by the Justice-Generall to losse his head,⁷ at the Croffe of *Edinbrughe*; and thereafter, the same head to be affixed one the jayle—for propofinge certane villanous and opprobrious Theses, in defamatiōe of his auen natiue countrey and countreyemen, and affixing them on a Church-dore, in *Oxford*, before fermon, one a Tuesday; offering them to be publicly dispute, and himfelue (miserable wretche!) to defend them. This sentence was put in executiōe within 2 dayes thereafter.”⁸—Another authority⁹ narrates the proceeding thus. “MR THOMAS ROSS, Minister at Cargill, having been convicted by an Affize, at Edinburgh, of writing, at Oxford, in England, against the Scots Nation, was executed at Edinburgh.¹⁰ His right hand was first stricken off; thereafter, he was beheaded, quartered, and put upon the Ports. He was of the House of *Craigie*, being a son of *John Ross*, Laird of *Craigie*, and went to Court. He wrote very unnaturally, and whereof he was not wise, against the Scots Nation. He was conveyed to Scotland in a ship. *Mr Thomas Ross* was insane, and his infirmity was pled in his defence. He affixed to the door of *St Mary’s Church*, in *Oxford*, a Latin Thesis, in which were ten propositions; wherein he attempted to prove, that the English ought not to allow so many of the Scots to remain among them. The King was ridiculously incensed, and instead of confining him, as one in his condition needed to be, he sent him to Scotland, along with strict orders that he should suffer death.”

It seems very singular, when all circumstances are considered, that so remarkable an occurrence has been entirely passed over in silence by *Spotswood* and *Calderwood*, in their Church Histories.

There cannot be a doubt that *Mr Thomas Ross* was a man of an ancient, influential, and highly respectable Family; and the Editor believes, that having embraced Episcopacy, he had gone to prosecute his studies in Oxford. It would appear, from the preceding notices, that *Ross* had previously

¹ See Vol. I. 385.
Oliphant of Newton.

² *Ibid.* II. 332.

³ *Ibid.* II. 349.

⁴ *Ibid.* III. 359.

⁵ Sir William

Oliphant of Newton.

⁶ *Annales*, MS. Adv. Library—and II. 70, Edin. 1824.

⁷ “In September 1618,

Mr Thomas Ros, sone to the Lard of *Cragie*, wes, for vreting, at *Oxford*, in *Ingland*, aganis the Scottis natioun, being send to Scotland be schip, convict be ane Assyse, his richt hand first struckin aff, thaireftir beheadit.”—MS. Adv. Library.

⁸ An obvious oversight of *Sir James Balfour*, who had probably noted down the day of his intended execution—omitting to rectify the date, after the King’s Warrant had been received.

⁹ *The Rev.*

James Scott’s transcript of the *Diary or Chronicle of John Mercer*, who was appointed Town-Clerk of *Perth*, Oct. 6, 1623, and lived to a great age. Orig. in Adv. Library. The Editor has the pleasure of notifying, that this interesting *Diary* is preparing for publication by his friend *James Maidment, Esquire*, as his contribution to THE MAITLAND CLUB, the Members of which have chiefly directed their attention to the printing of Historical works illustrative of Scottish affairs.

¹⁰ “2 Sep. 1618. MR THOMAS ROSS, Minister at Cargill, went to Court; and thair, for sum infamous writtingis, and railling aganes the Scottis Natioun, werie onnaturallie, being on of the sones of the Hous of *Cragie*; quhair of he wes not wyise. He wes headit in *Edinbrughe*, quhartherit, and putt wpon the Portis.”—*Fleming’s (Mercer’s) Chron.* MS. Adv. Library.

been *Minister of Cargill*; and as he is so designed in these accounts, it is likely that he had not been deprived of his living before the period of his execution. The conduct of KING JAMES in the whole of this matter, and his barbarous treatment of *Ross*, become altogether inexplicable, when it is considered, that at this very time, he was struggling to force Episcopacy upon the people of Scotland, as the permanent and established Religion of the country. In such circumstances, it seems strange indeed that he should have so rancorously pursued so zealous a convert to the forms and tenets of the Church of England, at the precise time that that person (a *Minister*, too, of the Kirk of Scotland) was doing every thing in his power to qualify himself for effectually pleading and maintaining the establishment of Episcopacy—a measure so near James's heart. *Ross*, however, had, for the indulgence of some mad and absurd frolic, written the Pasquil or Thesis in question, and affixed it to the Church-door of *St Mary's, Oxford*, as was then usual at all the great Universities in Europe, where public disputations were often held.¹ It was pleaded by the unfortunate man, that he had done so in a fit of *insanity*, which seems to have been credited by his contemporaries;—but all these circumstances combined, could not induce the King to save his life; on the contrary, they only inflamed his rage the more against poor *Ross*.

The only thing which can be urged in palliation of the rigorous sentence, which the King insisted on being put in execution, is, that at the time when KING JAMES succeeded to the English Throne, and for a long time after, the Scotch were peculiarly unpopular in England, and such swarms of needy adventurers had travelled southward, that not only were the greatest jealousy and hatred manifested on the part of the English, but it actually became necessary that a legislative enactment should be made, to prevent bloodshed and scenes of violence throughout the country. As remarkable instances of the rancorous feelings which existed against the Scotch, a curious passage may be cited from *Calderwood*,² which forcibly illustrates the state of the public mind, in England, upon this subject.—‘THE SCOTISHMEN lying at Court were in danger of their lives, be reafone of the great malice of the English conceived against them. *Sir John Ramsay's* brother smote the *Lord Montgomeries* brother on the face, with a rod, for a lie given him at a Horse-race. There were present about ane hundreth Scottish-men, all in danger to be maffacted, if the English had not been stayed by a Counsellor. *James Maxwell*, one of the Gentlemen of the King's Chamber, pulled ane Englishman's eare till it bleade. Oure countrymen durft not repair foe frequently to the Exchange or Comedies as they did before. The *Lord of Kinloss* was in great danger at a Comedie, but was convoyed secretly away be ane aged gentleman, who was weill acquent with his father. This lybell was affixed in open places,—

‘THE SCOTS DOE WHIPPE OUR NOBLEMEN WITH RODS—THEY KILL OUR FENCERS TRATROUSLY UNDER TRUST.’

‘The *Lord Sanquhar* indeid hired two Scottishmen to kill ane English fencer, who, fix or seaven years before, had putt furth his eye at fencing! They killed him in an Innes, whilles he was putting the cupe to his head. To content the English, the King consented that *Sanquhar* should be hanged. For the greater contempt of our Nobility, he was hanged among a number of Theaves!’

It is barely possible that the King may have discovered certain indications at Court, which, in a manner, forced him to sacrifice *Ross*, for the purpose of checking in the bud any future attempts at

¹ It may be esteemed worthy of remark here, that a shadow of this ancient custom is still observable at the Scottish Bar, where, previous to the inauguration of each candidate for admission into the body of the Faculty of Advocates, a *Thesis*, with its *Annexa*, is publicly notified on the walls of the Parliament-House—and especially at the outer-door of that Hall. It intimates that a public disputation, “*Disputatio Juridica*,” is to be held on a certain day, under the auspices of the Dean of Faculty; and the subject-matter of the *Thesis* is thus notified. Originally, the candidate had stoutly to maintain his ground against all comers, in the Latin tongue. It is almost unnecessary to add, that this *Disputatio Juridica* has now degenerated into a piece of empty form; in point of fact, it is “elegantly understood”—as no disputation whatever takes place, excepting that which is apt to arise with the printer and book-binder, who are the only parties at all benefited by this edifying solemnity. It is high time that such an useless waste of money should be prevented—and the sum at present bestowed in this way appropriated to the support of the splendid Library under the charge of the Faculty. ² *Church History*, Adv. Library, MS. ad ann. 1612.

fomenting these national jealousies. This, however, is merely matter of conjecture, and the only plausible apology which can be adduced for the perpetration of so tyrannical an act.

A very extraordinary instance of the same insane rage upon the part of the King, we learn from a rare Poem, entitled, a 'Counter-buffe to Lyfimachus, Junior, calling himself a Jesuite;' quarto, 1640, pp. 16;¹ where the fate of STERCOVIUS, a Pole, is alluded to. That stranger had unhappily appeared in Scotland in the dress of his native country, which attracted the attention of the idle, and brought down upon him the derision and abuse of the populace.

' Hither he came, clad all in antique fort,
Where seen in streets the subject of a sport,
He soone became to childish gazers, who
With skriecks and clamours hiss him to and fro,
Till forced he was with shame and speed to pack him,
And to his feet and loathsome cabin take him !'

Nettled at such rude and inhospitable treatment, he published 'a Legend of Reproaches' against the Scottish Nation, shortly after his return home; which, having reached the ears of his 'most sacred Majesty,' he procured the arrest and execution of the hapless STERCOVIUS! This out-herods Herod, with a vengeance! The death of this Pole was accomplished at an expense to the King of no less a sum than *six hundred pounds sterling*—an immense sum in those days. The instrument whom JAMES employed was one *Mr Patrik Gordon*,² a subject of Scotland, then resident in Poland. With a dexterity for which the sapient James was celebrated, he attempted to extort the price of this innocent man's blood from the *Royal Burghs of Scotland*! It is believed, however, that he was foiled in that attempt, by the Privy Council declaring themselves incompetent judges of the matter.³

In a very curious Collection, privately printed at Edinburgh, 1828, 'A Third Book of Scottish Pasquils,'⁴ the cases of *Ross* and *Stercovius* are particularly noticed; and a copious extract from the 'Counterbuffe' is there given. That singular Poem introduces *Ross's* story thus—which is enough for our present purpose.

. ' A Scot of ancient race,
A scholler, too, as thou art, lived a space
In England's Court; and for some private hate,
A Pasquill did against his country wreat,
As thou hast done in fouler sort; more full
Of vild aspersions from thy phrantick skull!
Well, then, King *James* of lasting memorie, who
Could not brook that any calumnie
Should be asperft upon his native land—
After some tryall there, he gave command
The Lybeller should home go, and sustaine
Of doome unpartiall laws th' unpitied paine.
And here being tryed, judged, and adjudged, they fand
That he should lose his head and faultie hand;
Which straight was done, in public view—and so
I thinke the matter with thyself will go !'

THE FAMILY OF ROSS OF CRAIGIE, near Perth, were probably a branch of the Family of the ancient *Earls of Ross*, and were reckoned among the most respectable Families in the shire. Many

¹ A copy is in the valuable Collection of David Laing, Esquire. ² Probably the author of the 'History of the Valiant Bruce,' in heroic verse. Dort, 1615; quarto. ³ See Decree of Lords of Privy Council, in *Charter-room of the City of Edinburgh*. ⁴ Prefatory Notice, xii. The two preceding 'Books' bear date, 1827, and 1828.

particulars concerning them are to be found in History so early as the reign of Robert Bruce, and in the records of the Religious Houses at Perth, to which they were benefactors. *Nisbet*, in the Appendix to his second Volume,¹ gives a list of some of the distinguished Families in the Kingdom to whom they were allied.²

It cannot be disguised, that however honourably born this family may have been, various members of it figured in Books of Adjournal, and others of them suffered the last punishment of the Law, for their crimes. JOHN ROISE of Craigie, James and Williame Roise, his brothers, John Roise, servant to vmq^{le} James Roise in Maitlandis, Lancelot Moncrief, servant to the Laird of Craigy, were, along with William Lord Ruthven, Henry Lord Methven, and others, brought to the bar of the Court of Justiciary, Nov. 12, 1571, for Oppression, Hamesucken, Convocation of the Lieges to the number of two hundred armed persons, besieging the Place of Dupplin, &c.³ This appears to have proceeded entirely from one of those deadly Feuds which were unhappily so common in Scotland at that time. Their antagonist was Laurence Lord Oliphant. But the most atrocious instance which the Editor can at present recollect, occurs in *Fleming's Chronicle*,⁴ under date Apr. 8, 1608; where it is recounted, that 'PATRIK EVIOT, brother-german to the Laird of Balhousie, wes murtherit in Blelok be his wife, JONET ROSS, quha wes air to the Lairdfchip of Craigie and Kynfawnes, both. He wes schote with ane gun in his bed, fleiping, be James M^cNair. Thairefter, they wer both taikin and execute—and brunt, efter they wer hangit, in the Playfeild of Perth, the 17 of Maij, 1608. The heid and arme putt wp on the Castell-Gawill-Port.' It will be recollected how narrow an escape *Patrick Eviot*, the husband of *Jonet Ross*, had previously made, when he was attacked by Sir Henry Lindsay of Carreston.⁵

After the death of JONET ROSS, the heiress of Craigie, (who seems to have wished to transfer, by marriage, her large estates to her blood-stained paramour, *James M^cNair*,) her uncle, *Robert Ross*, succeeded to the Estate of Craigie. The Laird of Balhousie at this time was *Colin Eviot*. The Reverend Mr Scott informs us, that "*Patrick*, his brother, had suffered trouble and loss by a sentence of Parliament, for the friendship he had expressed to the Earl of Gowrie, in 1600. The *Eviots* had been proprietors of the lands of Balhousie and Muirton, near Perth, for more than three hundred years. They were great benefactors to the Religious Houses, especially to the Black Friars' Monastery, at Perth; and some of the younger sons of the Family were in Clerical Orders. *Colin Eviot* was succeeded by his son *Patrick*, who, before 1618, had sold the lands of Balhousie to *John Matthew*, and was himself designed *Patrick Eviot* of Muirton. He was married, and had children."

The reader's indulgence is requested for the minuteness and prolixity of this Notice; which, however, has proceeded from the Editor's anxiety to throw all the light in his power on so extraordinary a Trial.]

Aug. 20.—MR THOMAS ROISE, sone to vmq^{le} Johnne Roise of Craigie.

Dilaitit of the devillische and detestable fforgeing, ffenzeing, blasphemous vttering, and by writ publictlie exposeing, of ane villaneous, infamous, and devillische Writt, all writtin with his awin hand, concerninge ane PASQUEILL or THESE; togidder with ten feuerall abhominable ARTICLES or APPENDICES, confirmeing the famyn—that all SCOTTISMEN aucht to be schote⁶ furth of THE COURT OF ENGLAND, excepting his gracious MAIESTIE, his sone, and ane verrie few vtheris, and that the INGLISCHMEN ar michtillie blindet, fylet, and disfaudet,

¹ *Nisbet's Heraldry*, App. to Vol. II., p. 23. ² See MS. Transcript of *Mercer's Chronicle*, before quoted, and noticed by the Reverend Mr Scott, Adv.^t Library. ³ See this Collection, Vol. I., p. 25. ⁴ Advocates' Library, MS. ⁵ See this Collection, Vol. II., p. 409; Feb. 1, 1601.

⁶ Ejected; thrust out by violence.

(althocht quik-fichtit vtherwayis,) that thay fould suffer sic ane vnprofitable and pernicious multitude and filthie aff-scoureingis of people to radge and dominire within thair boundis and intrallis, &c.

My lord Aduocat producet the said Mr Thomas Roise Dittay, togidder with ane directioun of the Counsell, vnder forme of Act, ordaning him to persew the said Mr Thomas for the crymes thairin contenit.

DITTAY against Mr Thomas Roise.

MR THOMAS ROISE, sone to vmq^{le} *Johnne Roise of Cragie*, 3e ar indytit and accuset, FORSAMEKILL AS, albeit it be expresse provydit, statute, and ordanit, be dyuerse Actis of Parliament, alsweill maid be his Maiestie as be his hienes progenitouris, of worthie memorie; speciallie, be the 43 Act of the secund Parliament of King James the first, intitulat, 'that Liefing-makeris tynes thair lyfe and guidis:' And siclyk, be ane Act maid be King James the secund, the 100 Act, contenit in the auld prentit Actis of Parliament, the foirsaid Act is ratifeit in all pointis, and Ordanit to be put in executioun in all tyme cuming; be the whilk, it is statute, 'that Leafing-makeris fall tyne lyfe and guidis to the King, and be at his Will:' As lykwayis, be the 134 Act of the aucht Parliament, haldin be his Maiestie, our darrest souerane, him selff, and his hienes Estaittis, in the moneth of Maij, 1584; and in the tent Parliament, haldin also be his Maiestie and his Estaittis, the tent of December, 1585, *articulo primo*, intitulat, 'Authouris of sklanderous speiches or writtis falbe pwneischet to the deathe.' Quhilkis Actis ar ratifeit and approvin in his Maiesteis fourtene Parliament, haldin the aucht of Junij, 1594: And be dyuerse vtheris Actis, alsweill maid be his Maiesteis selff as his Maiesteis progenitouris of renowned memorie, that all Liefing-makeris and telleris of thame, quhilk may ingender discord betuix the Kingis Maiestie and his people, quhair euir thay may be gottin, fall be chal- langet be thame that power hes, and tyne thair lyfe and guidis to the King; and that nane of his subiectis, of quhatfumeuir functioun, degrie, or qualitie, fall presume or tak vpone hand, privatlie or publictly, in Sermones, declamationes, or familiar conferences, to vtter ony fals, sklanderous, or vntrew speiches, to the disdayne, reproche, or contempte of his Maiestie, his Counfall, and proceed- ingis; or to the dishonour, hurt, or preiudice of his hienes, his parentis, or progenitouris; or to meddle in the effairis of his hienes and his estait, steiring vp his hienes subiectis to mislyking, seditioun, or vnquyetnes; and that nane presume or tak vpone hand, publictly to declame, or privatly to speik or wryte ony purpois of reproche or sklander of his Maiesteis persone, estait, or gouverna- ment; quhairby ony mislyking may be movet aganis his hienes and his nobilitie, and loveing subiectis, in tyme cuming; vnder the pane of death, to be inflictit vpone thame with all rigour: As the saidis Actis of Parliament in thame selffis

proportis. NOCHTWITHSTANDING quhairof, it is of verritie, that ye, the said *Mr Thomas*, in the moneth of Julij lastbypast, contrair to the tennour of the saidis Actis of Parliament, hes falslie, sklanderuslie, calumniousslie, dispytefullie, and devillischlie, within the toun of *Oxfurd*, in ENGLAND, fforget, ffenzeit, and blasphemousslie vtterit, and be writt expofet publictlye to be red and defendit be yow, (as ye affirme by your devillische writt,) within THE VNIUERSITIES OF OXFURD, CAMBRIDGE, PAREIS, and vtheris places mentionet in that villaneous, infamous, and devillische Writt; all writtin with your awin hand, in Latine, ane Propositoun or These, contening ten feuerall abhominable articles and (appendices), confirmeing the samyn, that all SCOTTISMEN aucht to be schote furth of *the Court of ENGLAND*, (excepteing his gracious MAIESTIE, his sone, and ane verrie few vtheris,) and that the INGLISCHMEN ar michtilie blind, fyllet, and diffauit (althocht quik-fichtit vtherwayis) that thai sould suffer sic ane vnprofitable and pernicious multitude and filthie aff-scoureingis of people to radge and dominire within thair boundis and intrallis. To the quhilk Propositoun, ye haiff sett down and subioynet ten feuerall fals reafones, leasngis, and vntreuthis, for confermeing your devillische propositoune. (Quhilkis ten reafones ar repeatit in this place as ane pairt of your Dittay, bot purpoisslie omittit and left out heirop, as nocht worthie to remane in ane Register, to offend the earis or eyis of the posteritie.¹) The quhilk blasphemous, iniurious, sklanderous, and devillische propositoun, and ten reafones, as ye terme thame, subioynet be yow thairto, for confirmatioun thairof, all writtin with your awin hand, ar ffals and manifest leasngis and vntreuthis; and war affixt be yow (maist impudentlie, as ane liar and defamear of your countrie and natioun, nocht worthie to haif inioyit the naturall air thairof) vpone *the Marie-Kirk-dur* of the said VNIUERSITIE OF OXFURD, vpone ane Twisday, being ane preiching-day, in the said moneth of Julij last, as the people war dissolueing and skailling fra the fermone, and as *Doctour Godwene, Vice-Chancellour of the Vniuersitie of OXFURD*, was cuming out of the Kirk; to the intent the samyn mycht be publictlye red and disperfit amangist his Maiesteis subiectis of ENGLAND: Off plane purpois and intention n thairby to haif steirit thame vp to the crewall, barbarous, and vnmercifull murdering, massacreing, and affasine of the hail SCOTTIS people, alsweill noble men and counsalouris as vtheris of the SCOTTIS NATIOUN quhatfumeuir, his Maiesteis guid subiectis and serbandis, attendantis vpone and about HIS MAIESTEIS royall persone in Court; quhilk could nocht haif bene accomplischt without the extreme danger and perrell of HIS MAIESTEIS sacreid persone, his gracious QUENE, and of THE PRINCES hienes. In the doing quhairof, ye haif

¹ (Marked on the margin,) 'Thir Thesis, with the argumentis or reafones subioynet pairto, ar gevin vp agane to my lord Aduocat.'

fforget, maid, and writtin innumerable leafingis, ffalfe, fkländerous, and vntrew fpeiches and wrytingis, quhilk mycht haif ingenderit difcoird betuix his Maieftie and his guid fubiectis; to the difdane, reproche, and contempt of his Maieftie and his noble progenitouris and thair proceidingis, and of your natie countrie, nocht worthie to haif the name of ane borne fubiect thairin; and thairby, hes medlit with his hienes effairis, eftait, and gouvernement, maift ffalfsie, barbaruffie, and vnnaturallie; contravening thairthrow (ye being ane SCOTTISMAN, albeit vnworthie) the tennour of the Lawis and Actis of Parliament thairof, and incurring defervetlie the panes and pwneifchment aboue written, mentionet thairintill; quhilk aucht and fould, in maift exemplarie maner, be inflictit vpone yow, with all rigour; to the terrour and example of vtheris to attempt the lyk. Quhilk is mair nor nottour, and ye can nocht deny.

MY LORD ADUOCAT producet the faid Mr Thomas Roifs Dittay, togidder with ane directioun of the Counfell, vnder forme of Act, Ordaning him to perfew the faid Mr Thomas for the crymes thairin contenit.

The faid Mr Thomas, eftir reiding of the Dittay, and his accusatioun of the crymes mentionat thairintill, acknowleges and confesses the famyn crymes to be of veritie; declairing that THE THESIS producet war writtin be him furth of ane mad and diftemperat humour, being *inops mentis* for the tyme; quhilkis he now, from his heart, repentis; craueing God, his Maieftie, and haill cuntrie people¹ pardoun for that his offence: And offeris him felff in his Maiefteis will, being a gracious Prince, quhais Royall difpofitioun, in all his proceidingis, hes ever inclynet rather to mercie, quhilk is the richt hand of God, nor² to the rigour of Juftice, quhilk is his left hand: Defyreing thairfoir, in all humilitie, my lord Juftice and Lordis of his Maiefteis Counfall present,³ to interceid at his Maiefteis handis, for fauour in his behalff.

My lord Aduocat takis instrumentis of the pannell his Judiciall acknowledge-ment and Confessioun of the cryme contenit in his Dittay.

THE JUSTICE findis the Dittay relevant, and Ordanis the famyn to be put to the knowlege of ane Affyse of the perfones fummond to that effect.

ASSISA.

James Somerwell of Spittell,	Johnne Levinftoun of Hayneing,	James Hoppringile of Heriote
James Levingftoun of Jerifwoid,	Robert Johnnftoun of Wamfray,	mylne,
Patrik Hunter of Hiltarvet,	Ja ^s Douglas, portioner of Lugtoun,	Robert Phillope, Schereff-clerk
Johnne Achiefoun, portioner of	Eduard Johnneftoun, elder, bur-	of Dumfreis,
Inuerefk,	ges of Edinburgh,	Mr James Ord,
George Redik, Shereff-depute of	Johnne Ker, portioner of Duding-	George Carnebie, burges of Ed ^r ,
Kirkcudbrycht,	ftoune,	Hew Rois of Balnamukie.

Eftir fweiring of the Affyse, the faid Mr Thomas of new agane, in thair

¹ Countrymen.

² Than.

³ Sitting as Assessors. Their names are not recorded.

presence and audience, confesses the wryting and affixing of the THESES and APPENDICES following thairupone; and that the THESES producet ar the samyn that was writtin and affixt be him: And as ofbefoir, he offeris him selff in his Maiesteis will for that offence.

My lord Aduocat takis instrumentis of the sweiring of the Affyse: and for verificatioun of the Dittay, produces the foirsaidis THESIS or PROPOSITIOUN, with the ten fals and vntrew ARGUMENTIS or REASONES following thairupone, all writtin with the said Mr Thomas awin hand. Repeittis the said Mr Thomas Judiciall Confessioun, first maid in presens of the Justice, and thaireftir renewit be him in the said Affyse presens and audience; and his becuming in his Maiesteis will, as guiltie and culpable of the saidis crymes: And lykwayis produces, for the said Affyse forder informatioun, the said Mr Thomas awin Depositiones maid and subscryuit be him at Edinburgh, the xj August instant, in presens of his lordschip, as his examinatur, nominat and appointit be the Lordis of his Maiesteis Secreit Counsell. And in respect thair of, and that the said Mr Thomas, eftir reiding of his Depositiones to him judiciallie, in presens of the Justice and Affyse, abydis thairat, and that thairby the saidis crymes ar clerlie verifeit and provin with sa manifest probabilities; in caice ony of thame acquit the pannell, (as he thinkis nane of thame will be sa voyde of knowlege or conscience sa to do,) Protestis for wilful and manifest Errour, with all perrel of the Law that may follow thairupone.

VERDICT. The Affyse,¹ being ryplie and at lenth advyset thairwith, togidder with the villannous and infamous Pasqueill or Theses, and damnable Appendices subioynet thairto; his Judiciall Confessioun and acknowlegeing thair of, and becuming in his Maiesteis will for the samyn, as altogidder guiltie and culpable thair of; his subscryuit Depositiones, producet be our fouerane lordis Aduocat, for cleiring and instructing of the said Dittay; togidder with the feuerall Actis of Parliament quhairvpone the said Dittay is foundit; thay all in ane voce, be the repourt and declaratioun of the said Johnne Levinstoun, chancellor, ffand, pronuncet, and declarit the said Mr Thomas to be Giltie, culpable, and convict of the said devillische fforgeing and exposeing, be writt, of the said villannous and ffalse Theses, and ffalse and damnable Appendices subioynet thairto; and affixing the samyn (thay being manifest lewis and vntreuthes) vpone the said Kirk dur, in forme and maner specifeit in his Dittay; and of the samyn Dittay, and haill crymes contenit thairintill, and of contravening, thairthrow, the tennour of the saidis Actis of Parliament; quhairby he hes incurrit and fallin vnder the danger,

¹ Mr Alexander Hammiltoun of Kinglas; Raulf Ker, bailzie of Lauder; Robert Moutray of Seyfeild, Allardice of Skadowie; Charles Cairnecrofe of Birkneip; Johnne Paterfone, Schereff-clerk of Fyfe; Johnne Haitlie in Sneip; David Ramsay in Pethheid of Lesuaid, Portious of Glenkirk, and Robert Creichtoun, brother to Innernytie; ilk ane of thame vnlawit in the pane of ane hundreth merkis, for thair nocht compeirance vpone the said Mr Thomas Affyse.

and within the compas of the panes and pwneischment mentionet thairintill, justlie merited be him.

THE JUSTICE, in regaird of his convictioun, Ordanit him to be tane bak to waird, and to be keipit in irnes, quhill his Maieftie by acquaintit with his convictioun, and quhat exemplarie pwneischment fall be execute vpone him for his offence.

Sep. 10.—SENTENCE. The Justice, conforme to ane Warrant and direction of his Maieftie, direct to my Lord of Bynning, his hienes Secreter,¹ be the mouth of Johnne Dow, dempster of Court, Ordanit the said Mr Thomas to be tane to the Mercat-croce of Edinburgh, and thair, vpone ane scaffold, first his rycht hand to be strukin aff, and thairefter his heid to be strukin frome his body: And his heid to be thaireftir affixt and set vpone ane irne prik vpone the *Nether-boll-Poirt*; and his said rycht hand to be also affixt vpone the *Wast-Poirt* of the said burgh of Edinburgh: And his haill moveable guidis and geir, &c. (gif he ony hes) to be escheit to his Maiesteis vse, as convict and culpable of the said haynous cryme.

CURIA JUSTICIARIE, &c. per M. Rob. Fairlie, Justiciarium s. d. n. Regis, hac in parte, virtute Commissionis Dominorum Secreti Consilij, specialiter constitut.

Mutilation.

Nov. 4.—WALTER SCOTT, sone to Johnne Scott in Newark.

¹ The following extraordinary composition has fortunately been preserved among the *Denmylne MSS.*, Advocates' Library—but the King's 'Warrant and direction' has probably been too pithy to have been filed by that obsequious courtier the 'Secreter,' even in his private Collection, as being considered too strong meat for posterity! Having the fear of his Majesty before his eyes, he perhaps felt that his own head and hand might be called on to answer for disobeying the strict injunctions given him.

MOST SACRED SOUERANE,

THE furious wretche MAISTER THOMAS ROS, wes, according to your MAIESTIES commandement, put to his tryall, and conuicted of the haynous crymes conteaned in his diuelish Pasquil, produced for verificatioun of his guiltines, to the Affyse. The Dome is delaied till your MA^{TIE} be pleased to signifie your royall determination in it.

His malicious frenesie is so mixed with presumption of his owne wourth, as he thinkis the vse of his learning and eloquence necessar to the world; and that his passioune having furneished so much stuf, in so bad a pourpose, he is able, in ane subiect so wourthie and true as the commendation of your Royall guiftes of bodie and mynd, and most princelie actions, to kythe miracles in dew publeissing thair of! To this sence, he spak in jugement: And leauing to your MAIESTIES euer gracious clemencie, multiplied exemples of diuine and humane Histories, to the commendatioun of the famous Princeis who had gracioullie pardoned heigh offences; adding exemples of manie, who being transported be passion to madnes, had thairefter recovered thair setled jugement, and done great and wourthie materis; promeising no les of him self.

Your MAIESTIES Aduocat has wyselie considered, that the infame of his Dittay meritis not to be insert in the Register of the Adiornall. Alwayis I haue sent to James Douglas the copie of the proces, that when your MA^{TIE} desyres to sie it, he may haue it reddie, and may conceale it from all vthers. So exspecting the signification of your MAIESTIES farder pleasour, anent this vnnaturall and furious foole, I beseik God long to preferue your MAIESTIE in perfection of all honour, happines, and contentment.

Your most sacred Maiesteis most humble, faithfull, and bund subiect and seruant,

ED^R, 22 Aug. (1613.)

BINNING.

TO THE KINGIS most sacred MAIESTIE.

Dilaitit of airt and pairt of the hurting, wounding, and mutilatioun of Adame Dalglesche, sone and appeirand air to Johnne Dalglesche of Deuchar, of thre fingeris of his left hand; committit in the moneth of August, 1617 yeiris, at Muriefones-hill, befyde the burgh of Selkirk, vpone set purpois, prouisioun, and foirthocht fellonie.

PERSEWARIS, Adame Dalglesche, Sir Williame Oliphant, kny^t.

PRELOCUTOUR in defence, Mr Thomas Nicolfone, Aduocat.

It is allegit be the pannell and his prelocutour, that this matter can nocht be put to ane Assyse; becaus, gif ony hurt or mutilatioun was gevin be him to the persewer, nocht granting the samyn, it was done in his awin defence; insafar as, vpon the sevint of August 1617, the pannell was set vpone be Adame Dalglesche, persewar, neir to the toun of Selkirk, and was crewallie hurt be him: ffor the quhilk, the said Adame, vpone the xxvj day of Marche 1618, being summond befor the Scheref of Selkirk and his deputis, to vnderly the Law for the hurting and wounding of the said Walter Scott, defender, in the heid, to the effusioun of his bluid in grit quantitie, was, be ane Assyse of xv sworne men, ffund gyltie, and convict of the bluid and bluid-wyte: And producet the Rolment of Court, for verificatioun thair of, vnder the subscriptioun of Alexander Wilkiesoun, clerk of the said Schereff-Court. *Secundo*, the Dittay is nawayis relevant to pas to the knowlege of ane Assyse, becaus *mutilatio est tantum amputatio membri*; and thair is na member cuttit af, ffor the persewaris haill hand, and fingeris thair of, ar yit extant be oculour inspectioun; and he is able to move his hand and fingeris, and to grip thairwith.

It is ansuerit be the persewaris, that the allegiances foirsaidis aucht to be repellit, in respect of the summondis and Dittay producet; with ane Testimoniall of the Chirurges, subscryuit be the Deacone and thre of his bretherene, testie-feing the mutilatioun, togidder with the persewaris awin mutilat hand, mutilat in thre fingeris thair of schawin judiciallie to the Judge. And as to the Rolment of Court producet, na respect fould be had thairto, the samyn being altogidder null and repugnant to the lawis of this realme; be the quhilk, ane Sentence is gevin out in ane Criminall matter, the pairtie accused nocht compeirand, convictand him of ane cryme; quhairas, be the Law, (he nocht being present nor compeirand,) he aucht nocht to haif bene put to ane Assyse; bot the maist that could haif bene done be the Schereff in that Judicatorie, was allanerlie, to haif vnlawit him *in pena contumacie*: And albeit the Schereff and his depute wald geve out his or thair Testimoniall, that the said Adame Dalglesche, quha is mutilat, was the persewar, na respect fould be had thairto, becaus that is na pairt of thair office: And thairfoir, na respect fould be had to the Rolment of Court.

To the quhilks, it is replyit be the pannell, that the Rolment of Court is sufficient to instruct his allegiance; becaus, quatevir the pannell did, it was in

his awin defence, in respect of the forme of proceeding vsset in the Scheref Court, quhilk is, to put the pairtie accusset to ane Assyse, albeit he be absent and compeiris nocht; alwayis,¹ it is sufficient to instruct that pairt, that he is convict of the bluid and bluid-wyte, and was *contumax*,² and compeirit nocht; quhairupoun he tuik the cryme vpone him: And as for that pairt of the allegiance maid be the pannell, that the taking away of the finger is nocht *amputatio membri*, becaus the finger is nocht *membrum*, bot *pars membri*, as sayis BALDUS, Leg. *non sunt liberi*, ff. *de statu hominum*,—whois wordis ar, *Nota, digitus non dicitur membrum sed pars officialis membri; et sic amputans digitum non dicitur amputare membrum*: And BARTOL. Confilio 201, sayis, *Queritur numque digitus sit membrum? Respondetur quod non, sed potius pars siue officium membri; per Legem, non sunt liberi*, ff. *de statu hominum*.—*Tertio*, the persewar is nocht mutilat in thais thre fingeris, becaus he is able to grip with thame and hald; and sa thay ar nocht vnprofitable.—*Last*, thair can na payne of the body be inflictit, albeit the thre fingeris was mutilat, as is allegit; becaus na pane corporall can follow, feing na death followit; bot only ane arbitrarie and pecuniall payne, to be modifeit be the Judge.

It is anfuerit be the persewaris, to that pairt of the allegiance proponit, that the cutting af of ane finger is nocht mutilatioun, it is nocht pertinent to this purpois; becaus the persewar complenis that he is mutilat of thre fingeris, quhilk ar nocht cut aff, bot mutilat and maid vnhable, quhairby he hes nocht the full and rycht vse, nather of his thre fingeris, nor yit of that hand: And as for the mutilatioun it self, and verritie thair of, it is verifeit be oculour inspectioun, and be the Chirurganes Testimoniall producet: And quhair it is allegit, that the Rolment of Court producet, is only vsset bot to verifie that the persewer is culpable of the bluid and bluid-wyte, repeitis the anfuer maid thairto of befoir, with this eik,³ that the Schereff had na power to put him to ane Assyse, he nocht compeirand; sa that the Declaratioun maid be the Inqueist, aucht nawayis to be respectit: And as to the Schereff, he had nocht power to geve ony Declaratioun thairupoun; and the pairteis contumacie and absence is na cause to convict him of the bluid or bluid-wyte; and becaus of his absence, he could be na forder convict bot in payment of the vnlaw; sua that, in respect of the premiffes, na respect aucht to be had to the Rolment of Court or ony pairt thair of: And albeit a pairtie be *contumax* and compeir nocht, that contumacie convictis him nocht of the cryme; vtherwayis, gif ane pairtie war *contumax*, it war nocht neidfull to put him to ane Assyse of new, quhilk war ane grit absurditie; feing, findrie persones being summoned to compeir befoir the Justice Generall and vtheris Judges in Criminall causses, thay purge thair contumacie, and offer thame selffis to ane tryell; and cowmonlie thay ar clanget be the Assyse; as was

¹ At all events.² Contumacious; showed contempt of Court by not appearing.³ Addition.

ffund in this Judgment, betuix *Cunninghame* and *Wylie*. And as to the Doctouris of the Law allegit, na respect aucht to be had thairto in this Judicatorie, in respect of the inviolable practique obseruet within this realme; quhairin, mutilatioun of ony pairt of ane mannis persone, be the quhilk he is frustrat of the rycht vse thairof, is put to ane Assyse determinatioun; the Justice advyses and resolues vpon the pwneischment, be advyse of the Lordis of Secreit Counsell.

THE perfewar Restrictis this Lybell to the mutilatioun of the thre last fingers of his left hand allanerlie.

It is forder allegit be the pannell, that he can nocht be put to ane Assyse for the mutilatioun lybellit; in respect, gif ony hurt or mutilatioun be gevin to the perfewar, it was done be the perfewar him self, in drawing of his awin fuord the tyme lybellit; quhilk he has dyuerse tymes confessit to Andro Scott Chirurgane, and vtheris; and desyres the perfewaris ayth to be tane thairupoun.

The perfewar, being solemnlie suorne vpon the last allegiance, anent the mutilatioun be him self with his awin fuord; he, be his grit aith, denyit the samyn; and affirmet that he was mutilat be Walter Scott, defender, and na vther: Quhairupoun my lord Aduocat askit instrumentis.

THE JUSTICE findis the Dittay relevant; and remittis the samyn to the tryell of ane Assyse.

ASSISA.

Robert Trumble of Huttrilburne, Johnne Trumble of Howdene, James Kene, bailzie of Selkirk, James Pringill in Tynneis.¹

The perfewar, be his grit ayth, swore the Dittay to be of verritie: Quhairupoun my lord Aduocat askit instrumentis. And in respect thairof, and of the Chirurganes Testimoniall producet, with the evidence of the mutilatioun, be schawing of the perfewaris mutilat fingeris, Protestis for Wilfull Errour, gif the Assyse acquit.—The pannell repeittis the allegiances maid be him of befoir, now to the Assyse, speciallie, that pairt thairof, that the cryme was committit in his awin defence, and that he was perfewit be the perfewar, and is convict thairof, and of the bluid and bluid-wyte, as the Rolment of Court beiris.

VERDICT. The Assyse, be the mouth and declaratioun of James Wauch in Selkirk, chancellor, fand the said Walter Scott to be ffylet, culpable, and convict of the mutilatioun of the said Adam of thre fingeris of his said left hand, in manner and at the tyme specifeit in the said Dittay.

THE JUSTICE, in respect of the former convictioun, Ordanit the pannell to find caution for his compeirance befoir the Justice or his deputis, in the Tolbuth of Edinburgh, the ellevint day of November instant, to heir sic Dome and pwneischment to be inflictit vpon him for the said cryme, as fall be inioynet be

¹ The rest of the Assise were persons of no note.

the Lordis of Secreit Counfall: And that he onnawayis depairt furth of the burgh of Edinburgh, in the meane tyme; vnder the pane of ffyve thowfeand merkis money.—George Scott of Castelfyde, Robert Scott of Hertwoidmyres, Walter Scott in Loquharret, and Williame Mitchelhill, burges of Selkirk, become cautioneris and fouerteis, &c.

Nov. 11.—CONTINUED to the xiiij day of Januar nixt.

(Jan. 13, 1619.)—THE JUSTICE, of consent of Adame Dalglesche, perfewer, continewis the pronunceing of Dome, to the tent day of Februar nixtocum.

(Feb. 11.)—THE dyett DESERTIT, be direction of the Thesaurer for the Kingis pairt; in respect the pairteis ar agreit be my Lord of Balcleuches Decreit gevin thairin, to quhome the matter was submittit.

Slaughter.

Nov. 11.—GAWIN NISBET, sone to Robert Nisbet of Dalzell, and James Scott in Ardblairis.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Hammiltoun in Brigbrae; committit at ane Oisler-hous, callit the Woman-hill, in the moneth of . . . , 1617.

PERSEWAR, Robert Hammiltoun, as brother.

THE Justice, of consent of aither pairtie, continewis this dyet to the thrid day of the air (of Lanerk), or soner, vpone xv dayis wairning, &c.

[*Mr Alexander Coluile.*]

Cutting and Carryng away of Growing Timber.

Nov. 18.—DAVID SPALDING of Effintullie, and Alexander Robertstone of Myddill Downie.

Dilaitit of airt and pairt of the cutting down of certane grit growand treyis, and away-taking thairof, furth of Johnne Erle of Mar his Forrestis and woidis, within the boundis of Braemar, Cromar, Strathdie, and Glengarie.

In respect of thair compeirance, offerit thame selffis to the tryell of the Law, as altogidder innocent thairof; and protestit for thair cautioneris releif; and that thai fould nocht be trubillit or charget for the saidis allegit crymes.

Slaughter.

Nov. 18.—JAMES MYDDILTOUN, sone to Robert Myddiltoun, tailzeour, burges of Edinburgh.¹

The famyn day compeirit personallie, in judgement, Robert Wynrahame, Herauld, and producet ane Supplicatioun, quhilk was gevin in to the Lordis of his Maiesteis Secreit Counfall, be James Myddiltoun, sone to Robert Myddiltoun,

¹ See Aug. 26, 1612, where the whole particulars of the Trial are inserted.

tailzeour burges of Edinburghe, anent the said James puting to libertie; togidder with the saidis Lordis of Secreit Counfall thair Warrant and delyuerance on the bak thair of. Off the quhilk SUPPLICATIOUN and delyuerance the tennour followis.

MY LORDIS OF SECREIT COUNSALL, vnto your lordschipis humlie meanis and schawis I, your feruitour, *James Mydiltoun*, sone lauchfull to vmq^{le} Robert Mydiltoun, tailzeour burges of Edr, That quhair, vpone occasioun of that vnhappie accident of the slauchter of vmq^{le} *Clement Mauchane*, committit be me, I was takin, presentit to iustice, and convict for pe fame, and the dome of death was pronuncet aganis me accoirdinglie thairfoir: And pe pairtie, from tyme to tyme, thir sex zeiris bygane, haifing gevin eir to the offeris of Afflythement,¹ quhilkis war by me and my freindis maid and offerit vnto thame; in end, by submissioun of pe matter vnto your lordschipis Sentence and Decreit, as gevin and pronuncet pairintill, quhairby I am decernit to be BANISCHET pe realmes of Scotland and Ingland, and ordanit never to returne agane within the fame, without Licence and consent of Sir Johnne Cokburne of Ormestoun, kny^t, Justice clerk, and Mr James Mauchane, brother to the said vmq^{le} Clement Mauchane, first had and obtenit pairto, vnder the pane of deid, to be execute vpone me without fauour; conforme to pe Sentence and dome alreddie gevin and pronuncet aganis me in pis matter. Accoirding quhairvnto, I am maist willing to act my selff in pe buikis of Adiornall: In confideratioun quhair of, I humblie beseik your lordschip to geve Warrant and command, heirby, to the Justice clerk and his deputis to tak me actit in the buikis of Adiornall, in maner and to the effect foirsaid, vnder pe pane aboue writtin: Quhairanent pir presentis fall be vnto pe Justice clerk and his deputis ane Warrant sufficient: And your lordschipis ansuer.

APUD ED^B, xvij Nouembris, 1618, THE LORDIS Ordanis the Justice, Justice clerk, and his deputis, to appoint and set a Justice Court, and to tak pis supplicant actit in pe buikis of Adiornall, that he fall depairt furth of the realmes of Scotland and England, within pe space of ane moneth estir pe dait heirof; and returne (nocht) agane within pis realme, vnder the pane of deid: And he haifing actit him selff, as said is, Ordanis pe said Justice to caus put him to libertie: And Ordanis this supplicant, that, during the tyme of his remaning within pis cuntrie, he hant² nocht Kirk nor mercat, and that he weir nocht a sward.

AL. CANCELL^s. SANCTANDROIS. LAUDERDAILL. CARNAGY. J. PRYMROIS.

AND accoirding to the said WARRANT, the said Robert Wynrahame desyret my Lord Justice to tak the said James Mydiltoun actit; lyk as, the said James Mydiltoun, immediatlie thaireftir, being, be directioun of the Justice, brocht furth of waird be George Foulis, his Maiesteis Maister Cunzeour,³ and ane of the present Bailleis of Edinburghe, and presentit vpone pannell, conforme to the foirsaid Supplicatioun and Warrant on the bak thair of, maist willinglie become actit, bund, and obleift, that he fall depairt and pass of the realmes of Scotland and Ingland, within the space of ane moneth, &c.⁴ Quhairvnto my Lord Justice interponet his authoritie and Decreit: And in respect of the former Act, and for obedience of the said Warrant, Ordanis the said James Mydiltoun to be fred and

¹ A compensation or *solatium*, by way of fine, paid to the relations of the murdered party.

² Haunt; frequent.

³ Coiner; Master of the Mint. This officer (George Foulis of Ravelston) was the son-in-law and successor of GEORGE BANNATYNE, the far-famed Compiler of the greatest body of Ancient Scottish Poetry now extant; in honour of whom the Literary Association, termed THE BANNATYNE CLUB, assumed his name.

⁴ As above narrated.

releit furth of the said Tolbuth and waird of Edinburghe be the Proveist and bailleis of Edinburghe.

The said James Mydiltoun, *olim in carcere*, and now at libertie furth of waird, Ratifeis, approves, and affirmes the Band maid and subscryuit be him and his freindis, anent his Banischment, &c., and payment of the fowmes of money thairin contenit, &c.

Slaughter.

Nov. 20.—PATRICK HEROUN of Kierochtrie.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Robert Gordoun of Bairnairny; committit within the duelling hous of Andro M^cDowell, mercheand in Monygof, in the moneth of September last.

PERSEWAR, Alexander Gordoun of Barnernie, eldest sone.

The pannell protestis for his cautioneris releif; and offeris him self to the tryell of the Law, for the said allegit cryme, quhair of he is altogidder innocent; disassenting to all maner of continuatioun.

THE Justice Continewis this dyet, of the perseweris consent and desyre, to the thrid day of the nixt Justice-air of the scherefdom quhair the pannell duellis, (Wigtoun,) or soner, vpone xv dayis wairning. And ordanis caution to be ffund be him for his entrie to that effect, vnder the panes contenit in the Actis of Parliament: Quha fund Sir Patrick M^ckie of Larg caution for his entrie, &c.

Usurping King's Authority, by taking Captive and Detaining, &c.

Nov. 20.—THOMAS MELDRUM of Idene;¹ Walter Grant, his servand; James Grant in Tilliebo; Johnne Roife, servand to the said Thomas.

Dilaitit for taking and apprehending of Johnne Meldrum of Ordley captiue and prissoner, furth of his duelling house of Ordley, vpone the viij day of Maij, 1612 yeiris, vnder nycht; cayreit him to the said Thomas duelling hous of Idene, quhairin he was detenit, *in privato carcere*, be the space of foure dayis and foure nychtis; and thairfra, cayreit him to Sir Alexander Gordoun of Clwneis hous, quhair he was detenit, *in privato carcere*, the space of tua dayis and tua nychtis; and thairfra brocht him, as ane captiue, all the way to the burgh of Edinburghe, to the duelling hous of Alexander Watfone, quhairin he was detenit, *in privato carcere*, as ane prissoner, the space of xxiiij houris: Vfurpeand thairby his Maiesteis authoritie vpone thame, in taking and detening of the said Johnne, *in privato carcere*, but² Commiffioun or authoritie, be the spaces foirsaid.

PERSEWARIS, Johnne Meldrum of Ordley; Sir Williame Oliphant, kny^t.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Thomas Nicolfone, elder.

¹ See Jan. 9, 1618.

² Without.

It is allegit be the pannell, that na proces can be grantit at Johnne Meldrumis instance, becaus he is rebell and at his Maiesteis horne; and producet fyve feuerall Hoirningis for verifeing thair of.—My lord Aduocat declairis he infistis in the perfute for the Kingis Maiesteis intreis aganis the pannell, quha had na power to tak and detene the said Johnne, in maner lybellit.

It is allegit be the pannell, that gif the Dittay war trew, (nocht grantand the samyn,) that thai did na wrang in taking and detening of the said Johnne Meldrum, becaus the tyme of his taking, he was rebell and at the horne; and repeittis the Hoirningis producet for instructing thair of: And as the pannell could nocht be callit for Slauchter of ane rebell at that tyme, far les can thai be perfewit for his taking.—It is anfuerit be my lord Aduocat, as perfewer, that the exception aucht to be repellit; *ffirst*, becaus he infistis vpone the haill lybell *coniunctim*, as ane cryme to infer the conclusioun thairin contenit, viz. taking and detening of Johnne Meldrum *in privato carcere*, as the lybell beiris: *Secundo*, adheirand to the first anfuer, geveand¹ the said Johnne had bene rebell, the pannell had na Warrant to tak or apprehend him, thay nor nane of thame being Magistrattis, haifand na Jurisdiction, power, nor commissioun; feing the pannell could nevir haif bene accuset for suffering a rebell to pas vp and doun the cuntrie, nather warthay astrictit of the Law² to tak him, nather mycht thay tak him.

It is duplyit be the pannell, that the exceptioun standis relevant, nochtwithstanding of the anfuer, insofar as the Kingis Maiesteis rebell can haif na benifeit of his Maiesteis Lawis; and thairfoir, as nocht being the Kingis frie leige, it was lauchfull to the pannell to tak him; and in the Law it is cleir, *quod capere Bannitum unicuique permittitur*, L. finali Cod. *de Maleficis et Machematicis*; Baldus in Lege prima, Cod. *de Summa Trinitate*: And the reffone of the Law is, *quia Bannitus habetur pro fugitivo; et fugitivum quilibet potest capere*; Bald. in Lege *qui bonis*, Cod. *qui bonis cedere*: And it was nevir practizet in this Judicatorie, that Hoirning being obiectit and producet, ather for hurting, flaying, or taking of ony man, proces was grantit. And it being now opponit, that the persone tane was the Kingis Rebell, the pairtie perfewit was nevir, nor can nevir be put to the knowlege of ane Assyse. Lykas, it is allegit, that *the Laird of Drumlangrig*, being accuset for taking of *Kirkmichell*, was nocht put to ane Assyse. It is forder eikit to the allegiance, that the pannell had ane speciall intreis to tak him, becaus he was rebell and at the horne for nocht removeing fra his landis of Woidheid, quhilkis landis of Woidheid he violentlie possessit, and opprest the tennentis. Lyk as, the said Thomas Meldrum of Iden, finding the said Johnne Meldrum to be nyne or ten tymes his Maiesteis rebell, and haifing letteris of Captioun to tak and apprehend him, the said Johnne being

¹ Giving or granting, for the sake of argument.

² Bound by law.

ane fugitiue and ane howlat,¹ nocht appeirand in the day; and it being cum to the pannellis knowlege, the tyme lybellit, that he was cum, vnder filence of nycht, and enterit within the houffis, the pannell, vpon suddantie, being adverteist by the spyis, nocht haifing the occasioun² of ane messinger, was forcet of necessitie, *propter periculum fuge*, to pas him self, with his awin domestik seruandis, and to seasevpone the said Johnne, of intentioun to exhibeit him to Justice, he being his Maiesteis rebell for causses Criminall, sic as for invaiding *the Guidman of Harthill, &c.*, as the Hoirningis beiris: Lyk as, with all convenient dilligence, the pannell brocht the said Johnne Meldrum to Edinburghe, of intentioun to exhibeit him to justice; and in the meane tyme, he being seafit vpone and put in waird, at the instance of dyuerse persones, baith for dett, ryottis, and oppreSSIONES. Quhairvpone the pannell meanit him self³ to the Lordis of Secreit Counsell; quha, be thair Warrant and directioun, vpone the xxj of Maij, 1612, Ordanit the said caution for observeing his Maiesteis peace, and his personall compeirance, quhan euir he fould be charget thairto, vnder the pane of V^m (5000) merkis, as the Ordinance, heirwith producet, beiris. Sua that the pannell, being *in prosecutione proprie injurie*, for freithing⁴ him selff and his tennentis of ane manifest oppreSSION, *et quum latitabat tanquam fugitivus*, as said is, he was *in optima fide* to tak him; and nather the captor nor detentioun can be comptit criminall, becaus it is lauchfull, *cuilibet ex populo*, to tak ane notorious malefactour, and to exhibeit him to justice; and his detentioun is nocht *culpa*, becaus he was presentit to justice.

It is ansuerit be my lord Aduocat to the first pairt of the Duply, that he repeatit his former ansuer; for albeit ane rebell may nather persew nor defend in judgement, that is na reasone quhairfoir everie privat man fould tak him at his awin hand, and detene him in his privat hous, as is set down in the lybell. Quhair the defender wald compair ane rebell *cum bannito*, nocht grantand to the Law allegit, quhilk makis na mentioun *de Bannito*, ffor *Bannitus* was properlie callit he quha transgressit aganis the Empyre or the Estait. As to the allegiance proponit aganis all the perseweris rebelliones, thair is nocht ane proponit for ane criminall cause persewit criminallie; and as to the haill ciuile Hoirningis, repeittis as of befoir. And quhair it is allegit, that he was rebell at the instance of Thomas Meldrum him selff, ane of the pannell, for nocht removeing fra his landis of Woidheid, it is ansuerit, that albeit he was pairtie aganis him, that gave him na authoritie to tak him at his awin hand, speciallie being duelling and remaning in his awin hous, and vpone his awin heritage of Ordley, and nawayis being fugitiue fra his Maiesteis lawis at that tyme. As to the Hoirning vset aganis him, at the instance of his Maiesteis Aduocat for the tyme, the Guidman of Hearthill

¹ Owl. Such persons were likewise often termed *night-hawks*.

³ Made suit; complained.

⁴ Freeing; ridding.

² Opportunity; convenience.

and his bairnis, is na Criminall Hoirning, because it proceidis frome ane perfute agitat afoir the Counsell; and ffordere, to purge that Hoirning, he was relaxt thairfra, lang ofbefoir, viz. in *anno* 1609. As to the Letteris of Captioun producet, na respect fould be had thairto, becaus thair is an executioun producet, quhairupoun I tak instrumentis, defyreing the haill blankis thairintill to be fcoirit; and allegis, that na respect fould be had thairto, becaus the Letteris of Captioun ar nocht direct to him, nor to nane of the perfones that concurret with him in the taking of the faid Johnne Meldrum: Lyk as, na respect aucht to be had to the faidis Letteris of Captioun, becaus thair is na executioun producet. As to the Warrant of the Secreit Counsell, producet, the perfewar acceptis the famyn, and alledges that this Warrant, gevin vpon the xxj of Maij, 1612, could be na Warrant to the perfones on pannell, nor nane of thame, to haif tane him vpon the aucht day of Maij preceiding, and to haif keipit him *in privatis carceribus* to the faid xxj day, *quum carcer est meri imperij, et non competit privato*; and ane Ordiner Judge hes nocht power to keip ane perfone tane *in privato domo* attour¹ the fpace of xxiiij houris. Sua, infiftand vpon the haill lybell coniunctlie, as is confaует, the haill argumentis proponit for the pannell aucht to be repellit.

It is forder exceptit be the pannell, that with the Hoirningis producet, and allegeances foundit vpon the rebelloun of the perfewar, the defender did na wrang to tak or detene the perfewar, for the reffones foirfaidis. And quhair it is allegit, that he mycht nocht detene him, *quia carcer est meri imperii*; ffirst, it is allegit, that quhan ane rebell is tane *ad hunc finem*, to present him to the Judge Ordiner, thair is na wrang done, quhilk is in this caice; as is decydit in the Law laitlie allegit, *quod ait Pretor, Si debitorum ff. Digest. que in fraudem creditorum*: And thairfoir, feing the defender tuik the perfewer, being ane rebell, and detenit him quhill² he brocht him to the fait of Justice, and thair presentit him, thair can be na vfurpatioun of the Kingis authoritie: And as for the fpace of detentioun, it may be langer or fchorter, accoirding to the diftance of the place; as is cleir in Julius Clarus, L. quinta § finali, *fi captus, et aliquis potest illum detinere, et captum Judici presentare, etiam post septem dies*. And the fame Clarus fchawis, quhair it was practizet contra Dominum Joannem Stephanum, *qui furem septem dies detinuit, &c. sed cum compertum fuerit, quod Judici et officialis obtulerit, absolutus fuerit*.—Secundo, it is nocht capitall, bot the grittest pane that is inflictit is, *tot dies manere in carcere publico, quot illum in privato incluserit*: ffor albeit Lex vnica, Cod. *de privato carcere*, appointis it *penam maiestatis*, yit it is mendit be the nixt Conftitutioun immediatlie thair- eftir following, quhilk appointis the pane foirfaid. Ita Cujacius, &c.: And, gif neid beis, fall be provin be the confuetude of all Nationes; and gif *privati*

¹ More than; above.² Until,

carceres (quhairin thay ar done be manifest vsurpatioun) ar nocht capitall, *multo minus* can the pannell fall under ony corporall pwneischment, haifing tane ane manifest oppreffour, and presenting him to Justice. *Last*, as to the Relaxatioun fra *Harthillis* Hoirning, it is null, becaus the Kingis Aduocat and the pairtie is thairintill ordanit to be summond, quhilk is nocht done.

My lord Aduocat, anfuerand to the ffirst pairt of the secund allegiance, sayis, that the persewer is formallie contrair to the pannell, and that the lybell contenis ane sufficient Criminall caus, to put the pannell to the knowlege of ane Affyse: And quhair it is allegit, that the pannell brocht the persewer and presentit him to ane Judge, defyres the pannell to condiscend vpon the name of the Judge to quhome he was presentit; ffor it is treuthe, that quhan he was brocht to Ed^r, he brocht him to the calsay,¹ and than tuik instrumentis of his setting to libertie; and thairefter, certane of his creditouris, be vertew of Captioun, tuik him and pat him in waird. And quhan it is allegit that the taking of perfonis and keiping of thame in *privatis carceribus* is nocht capitall, the direct contrair is of verritie; becaus the said cryme is nocht only capitall, bot, be the rigour of the Law, is tressonable; as was decydit befor the Justice General aganis *the Erles of Huntlie* and *Crafurd*, ffor taking of *the Maister of Glames*. As to the practique of *the Laird of Drumlanrig*, in that caice it was alleget, for defence of *Drumlanrig*, that *Kirkmichell* was tane be vertew of Letteris of Captioun, direct to *the Schereff of Nidisdail*, and na Interlocutour was pronuncet in that cause, becaus the persewar past fra the persute thairof, *pro loco et tempore*. In respect quhairof, the lybell standis relevant; and, nochtwithstanding of the saidis allegiances maid be the pannell in the contrair, sould be put to the knowlege of ane Affyse.

THE JUSTICE continewis his Interlocutour to the thrid day of the nixt Justice-air of the scherefdome of Aberdene, or soner, vpon xv dayis wairning.—Patrik Meldrum ffear of Iden become fouertie for the entrie of the saidis Thomas Meldrum of Iden, his father.

Slaughter—Horse-stealing.

Nov. 20.—JOHNNE MELDRUM of Ordley.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Cristian Watfone, spous to Alexander Bythe sumtyme in Scottistoun, in manner specifeit in the Letteris; committit in Marche 1614: And for airt and pairt of the Steilling of tua horfis fra Thomas Meldrum of Idene; committit in September, 1608.

PERSEWARIS, Alexander Bythe, as spous; Thomas Meldrum of Idene; Sir Williame Oliphant, kny^t.

PRELOCUTOUR in defence, Mr Vmphra Blindschellis, (Advocate.)

¹ Causeway; the paved public streets within the gates.

THE JUSTICE continewis this dyet, for tryell of baithe the crymes aboue written, to the thrid day of the nixt Justice-air of the Sherefdom of Abirdene, &c.—Mr Williame Levingstoune become fouertie, &c.

Slaughter—Demembration.

Dec. 4.—WILLIAME STEWART, at the mylne of Dalcrove.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Daud Tofcheoche, younger of Monyvaird, and of airt and pairt of the Demembring of Daud Malloche, his ferwand, of his rycht hand; and remanent crymes contenit in the Letteris; committit the 24 of Junij last, within the burgh of Perth.¹

Compeirit Hew Campbell *excusatorio nomine* for *Annas Grakame Lady Monyvaird*, and producet the Letteris deulie execute and indorfate, togidder with ane Testimoniall, subfcryuit be the said Annas, and be Mr Johnne Menteith Minister at Monzie, and Mr Daud Drummond Minister at Creiff, testifeing the said Annas Grahame to be newlie delyuerit of hir birth; and thairthrow, vnhable to travell to the keiping of this dyet and perfute of the said Williame Stewart for the said cryme: And in respect thairof, protestit for releif of the Lairdis of Laweris and Inchebrakie, cautioneris for repoirting and perfute of the saidis Letteris.

THE JUSTICE continewis the dyet to the thrid day of the nixt Justice-air of the Scherefdom of Perth, or soner, vpon xv dayis wairning; and ordanis the pannell to find caution for his re-entrie. *Plegio, Waltero Stewart de Heildoun.*

PERSEWAR, Daud Malloche, sumtyme servand to vmq^{le} Daud Tofcheoche.

(Feb. 25, 1620.)—THE persfwer declaris, that at the tyme of the raising of the Letteris aganis the pannell, informatioun was gevin to him that the said W^m Stewart was in companie with Laurence Bruce of Cultmalundie, Alexander Flemyng of Moness, Alexander Bruce, and remanent persones thair complices, at the away-ftreking of his hand; bot senfyne, he hes tryit² that he is altogidder innocent thairof, nather was he vpon the grund at the committing of that fact: In respect quhairof, he passis *simpliciter* fra the said Williame his perfute.

Continued to the air of Perth, tertio Itineris, or soner, vpon xv dayis wairning. Thomas Layng, indueller in Leyth, cautioner.

Slaughter.

Dec. 9.—ROBERT CAMPBELL, sone to Colene Campbell, burges of Glesgow.

PERSEWARIS, Thomas Symfoun at the Waft-poirt of Edinburghe, as brother to the defunct; Sir Williame Oliphant of Newtoun, kny^t.

¹ See this Collection, Jul. 29, 1618, and Nov. 17, 1619.

² Proved; ascertained.

The pannell takis instrumentis of his entrie, and offerris him felff to the tryell of the Law for the said allegit cryme; affirmeing him felff to be altogidder innocent thairof; and difaffentis to all forder continuatioun, in respect that, to the keiping of that dyet, and cleiring of his innocencie of the allegit Slauchter aboue writtin, being out of the cuntrie this threttene moneth bygane, he being maid foirfene¹ thairof, be Letteris direct to him, and reffaut be him in *Spane*, he hes cum furth of *Spayne*, and left his affairs thair vnperfyttit, haifing na vther errand to returne hame bot to cleir him felff of sic ane haynous imputatioun; quhairof he is innocent.

INTERLOCUTOR. The Justice continewis this matter, and all tryell to be tane thairintill, to the thrid day of the air (Renfrew), or soner, vpone xv dayis wairning; and Ordanis the pannell to find cautioun for his re-entrie to that effect, vnder the panes contenit in the Actis of Parliament: Dischargeing in the meane tyme all letteris to be direct aganis him or his cautioner, except he be resident within the cuntrie for the tyme, nocht vpone the poynt of his voyadge; nather that ony Letteris be direct in the tyme of wynter: And declaris, that in caice he be charged vpone the poynt of his voyadge, for his compeirance vpone a fyftene dayis thaireftir, in caice at the day of compeirance it be allegit be his cautioner that he could nocht guidlie enter him, becaus he was boun² to his voyadge furth of the cuntrie the tyme of the geving of the charge, respect and confideratioun fall be had to the said allegiance, the samyn being lauchfullie verifeit and provin to be of veritie: And last, the Justice Discharges the haill perfonas fummoned vpone this Affyse fra all compeirance herein in tyme cuming, in respect this is the secund dyet keipit be thame, and nathing is done thairintill, &c.

[CURIA Justiciarie f. d. n. Regis, tenta in pretorio de Edinburghe, per M. Patricium Sandis, Justiciarium f. d. n. Regis, hac in parte, virtute Commissionis Dominorum Secreti Consilij.]

Slaughter.

Jan. 15, 1619.—ANDRO WAST, mafone burges of Dundie.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Alexander Tailzeour, his prenteis, be throwing ane four-futtit stule at his breift and heart, and geving him ane deidlie straik thairwith; committit within his awin duelling hous, in Dundie, in the moneth of Januar, 1611; quhairof he deceift, in Februar thaireftir, being cayreit fra Dundie to his fatheris hous in Elgyn, in ane horfe-litter, in grit dollour and payne, quhair he deceiffit of the said deidlie hurt.

PERSEWARIS, Johnne Tailzeour, mafone burges of Elgyn, as father; Sir W. Oliphant of Newtoun, kny^t

PRELOCUTOR in defence, Mr Alexander Peiblis.

It is allegit be the pannell, that the Dittay, as it is qualifeit, is nawayis relevant to pas to ane Affyse; becaus it is cleir, be the Dittay, that eftir the allegit straik gevin to the defunct with the stule lybellit, he travellit the space of fourscoir myles frome Dundie to Elgyn; quha, eftir his coming to Elgyn, be the exces of travell, he contractit ane fever, quhairof he deceift.—It is anfuerit be my lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay beiring the defunct to haif reffaut ane deidlie straik, quhilk was the cause of his daithe.

¹ Acquainted.

² Prepared; furnished; equipped.

THE JUSTICE findis the Dittay relevant ; and Ordanis the samyn to be tryit be ane Affyse.

The Aduocat takis instrumentis of the fueiring of the Affyse ; and thaireftir declairit, that feing they ar all induelleris in Dundie, to quhome the treuth of this matter was best knawin ; and that the defunct reffauit ane deidlie ftraik, quhairof he deceift, protestis for Wilfull Errour, gif thay acquit.—The pannell protestit in the contrair, affirmeing that the Defunct past hail and feir¹ furth of Dundie to Elgyn, and travellit lxxx myles thaireftir, vpone fute.

VERDICT. The Affyse, be the repourt and declaratioun of Robert Moreife, merchand in Dundie, chancellor, ffand, pronuncet, and declairit, all in ane voce, the said Andro Waft to be Clene, innocent, and acquit of the said crewall Slauchter.

Slaughter—Proof in exculpation, by Witnesses, refused.

Jan. 15.—JAMES SCRYMGEOUR in Balquhadlie.

Dilaitit of airt and pairt of the Slauchter of vinq^{le} Johnne Eduard in Acharne, be streking him ane deidlie ftraik in the heid, in September 1617 ; quhairof he deceiffit in Januar thaireftir.

PERSEWARIS, Johnne Eduard, as sone ; David Eduard, as brother ; Sir W. Oliphant, kny^t.

PRELOQUITOURIS for the pannell, Mr Thomas Hoip, Mr William Oliphant, younger.

It is allegit be the pannell and his prelocutouris, that the Dittay is nawayis relevant to pas to ane Affyse, nather in the distinct memberis nor *conjunctim* ; nather can ony Homiceid be tryit or pwneift, except the samyn proceed vpone ffoirthocht ffellony. As to that member of the Dittay, beiring the defunct to haif bene best and dung with ane rung,² *non relevat* to infer ane cryme. *Secundo*, as to that article thairof, quhair the pannell haket his heid with ane quhinger,³ (nocht granting the samyn,) it is na capitall cryme, bot ane ryote ; the tryell quhairof pertenis to the Counsell. *Tertio*, quhair it is allegit, that he was ftrukin to the grund, and hurt in his nobill pairtis, *non relevat*, vnles the persewar con-discend quhat intrallis or noble pairtis was brokin. *Quarto*, as to that point of the lybell, quhilk is the chieft member, beiring, that be occasioun of the hail ftraikis preceeding, he dwynet and pynet away to the tyme of his daith, *nullo modo relevat*, vnles he say *positiue*, that he deceift be thais ftraikis ; *nam non dici potest prebere occasionem mortis, nisi sit causa mortis*.—It is anfuerit be my lord Aduocat, that the allegiance foirfaid aucht to be repellit, in respect of the lybell beirand, that the defunct deceift of the ftraikis lybellit.

It is forder allegit be the pannell, that the Dittay, as it is mendit, is nawayis relevant ; becaus the preceeding qualificatioun can nocht be estemit *causam mortis*, except it war lybellit, that the defunct, immediatlie eftir the allegit ftraikis, he

¹ Whole and sound, or hearty.

² Basted and violently struck with a cudgel or heavy staff.

³ Hacked or notched his head with a sort of hanger or short sword.

fell doun in found¹ to the grund; or ellis, that be the ftraikis he contractit a deidlie difeafe and lay bedfast, ather immediatlie eftir the ftraikis to be the caus of a fupervenient difeis; ffor be the cowmoun consent of all Laweris, *vulnus non dicitur causa mortis, quando a die vulneris vsque ad vigefimum primum diem nulla supervenit febris vulnerato*. Panormitanus, ad Cap. *presbiterium, extra de Homicidium*. In the quhilk place, Panormitan and all the Canoniftis consentis, *quod hoc fit iudicium medicorum*; ffor if ony ffever had followit, gif he had convaleffit thaireftir, the ffever falling out vpon the ftraik was na caufe of deathe; *multo magis* in this caice, na fever following vpon the allegit ftraik gevin. In respect quhairof, the Dittay is nawayis relevant, *hoc autentico maxime*, that in the Dittay it is confest, that the perfone flane was threscoir ten yeiris of age, fa that it was nocht poffible to him to reffaue deidlie woundis, and to leave in health fa ang but² feiknes.

It is anfuerit be the perfewaris, that the allegiance aucht to be repellit, in respect of the Dittay beiring deidlie woundis, in maner qualifeit in the Dittay; and that he dwynet and continewit in grit pane to the tyme of his deceis.

It is duplyit be the pannell, that my lord Aduocattis reply is only in respect of the laft member; and thairfoir the vther tua, as nocht relevant, fould be scoiret out of the Summondis.

My lord Aduocat declairis, he infiftis vpon the Dittay *conjunctim*, as it is confauet.—The pannell allegit in the contrair, that it can nocht be conjoynet.—It is allegit *peremptorie* be the pannell, that it can nocht be affirmet that *Johnne Eduard* deit of the allegit ftraikis, in respect of the lybell, quhilk beiris, that he levit be the fpace of foure monethis (albeit, *in rei veritate*, he levit quhill a thre dayis befoir Faftrenifevin,³ quhilk was the 18 of Februar): becaus *secundum sententiam omnium medicorum, nullus lethaliter vulneratus potest vivere ultra quadraginta dies*. Jul. Clarus ad § *Homicidium*, vbi fubdit, *quod ita observat communis filius, et si vulneratus post illatum vulnus ambulaverit, non presumitur decessisse ex vulnere*. Lege vnica, Cod. *de Emendatione servorum*. Bartol. ad *Legem finalem*, ff. *ficarijs*, particulo preterea extra *de Clerico percussore*. Pharmacius *de Homicidio*, Tit. 14, quest. 125, num. 46, vbi testatur de communi medicorum opinione, *Vulneratum qui ultra quadraginta dies vitam porrigit, non presumitur ex vulnere decessisse*. And be all thair consentis, gif the pairtie nocht onlie leave,⁴ bot alfo gif he leave in healthe, without feiknes, and walk vp and doun in healthe, as ane haill man, the fpace of thre dayis, it is accoirdit, that the wound can nocht be the caufe of daithe: And the grund⁵ of this is tane out of the law of Moyfes, Exod. cap. 21, ver. 21. Off the quhilkis it is fubfumet, nocht onlie that the defunct levit fourtie dayis, bot neir-hand foure tymes fourtie

¹ In a swoon or fainting fit.
the day before the commencement of Lent.

² To live, in health, so long without sickness.
⁴ Live; survive.

³ Fasten's-eve;
⁵ Ground; warrant.

dayis, ffor he deit vpon the 16 or 17 of februar 1618: During the quhilk tyme, he was nocht onlie frie of feiknes, nor nevir lay bedfast, except in the ordiner tyme of rest, in the nycht; bot also, he walkit vp and doun the cuntrie and parrochines about, as ane haill man, and nevir tuik bed quhill aucht dayis befor his deceis, at quhilk tyme he was tane with ane fever, quhair of baith he and his wyfe deceissit.—Nather can the accuser, quhilk is the defunctis sone, be hard to allege in the contrair; becaus, at Martimes thaireftir, he forcet his father out of his awin hous; and the particuleris of this exceptioun the pannell offeris to prove be Witneses, quha are summond be the Lordis delyuerance: Quhilkis Letteris, proceeding vpon the said delyuerance, thay produce, and desyres that the Witneses may be callit and admittit thairupone. *Last*, the lybell can nocht be sustenit *ad hunc effectum*, to pwneis the pannell to death, becaus *nullum Homicidium morte punitur, nisi homicidium dolosum et deliberatum sive ex feloniam; aut culposum vel casuale non puniuntur ad mortem*. And for proveing of this propositioun, the pannell cites the third Parliament of King James the first, cap. 51, Quhair the Estaitis distinguisches betuix Slauchter of suddentie, and Slauchter of ffoirthocht fellonie; and declairis fellonie to be pwneist be death; bot the vther, that the pairtie skaithed fall follow, and the pairtie trespassand defend, accoirding to the course of the auld Lawis of this cuntrie: And siclyk, in the 6 Parliament of King James the first, cap. 95, quhilk contenis the same distinctioun, and closes this article, that gif it be ffoirthocht fellonie, he fall die thairfoir. Vpon the quhilkis it is subsumet, that it was nevir lybellit, nor can be lybellit, that this Slauchter was committit vpon ffoirthocht fellonie; bot be the contrair it is trew, that quhateuir the pannell did, he did it as maister to Findlay Ramfay and vmq^{le} Johnne Eduard, being baith his tennentis, *et sic dans operam rei licite*; in sa far as Johnne Eduard, being decernit in Court, in Junij 1617, of his awin consent to haif done wrang in teilling and sawing¹ of ane peice of land pertening to the said Finlay Ramfay; and be the Act of Court, the officer was ordanit to pas the tyme of scharing, and schar and leid the coirnes, as sawin vpon Finlay Ramfayis grund; lyk as, the saidis coirnis war arreistit be the officer, vpon the sext of Junij 1617; and thaireftir, in the tyme of scharing, the said officer haifing past to the grundis, and scharne the coirnes, and being leiding the samyn away, the said Johnne Edward cam maist proudlie and contemptuoullie (his maister being vpon the grund), and defoirct the officer in his presens; quhairupone the officer brak his wand:² Lyk as, the defunct being commandit be his maister to desist, he maist proudlie repynet contrair his Maiesteis lawis; and the pannell being present, haifing ane littill stalff in his hand, strak the defunct thairwith vpon the heid, and did no forder; nochtwithstanding quhair of,

¹ Tilling or ploughing, and sowing. ² Broke his staff or wand of office, symbolical of his being *deforced*, as it was termed, *i. e.* violently and forcibly interrupted in the execution of his office.

the defunct prouddie cayreit away the coirnes to his awin zaird, walking foundlie vpone his feit, without ony appeirance of hurt. And for verifeing thairof, producet the deforcementis.

It is anfuerit be the perfewaris, to the firft allegiance, proponit *peremptorié*, the famyn aucht to be repellit, in respect of the Dittay, Lawis and pratique vniuerfallie obferuit in this Judgment, and all vther Criminall Courtis within this realme, quhairin Dittayis ar evir fund relevant, and remitted to the knowlege of ane Inqueift, being lybellit and fet down in maner as this Dittay is lybellit; and that the perfone offendit deceiffit throw the hurtis and woundis gevin to him: And quhair it is meanit,¹ that he furvivet efter the geting of the hurtis the fpace of fyve monethis, that pairt is nawayis relevant mair nor was the firft; in respect that the Dittay beiris, that the defunct was hurt and woundit vpone the nynt of September 1617, and he deceffit thairof vpone the aucht or nynt of Januar thaireftir, 1618; quhilk Dittay beiris lykwayis, that he dwynet continually fra the tyme of his hurting to the hour of his daith.—Quhair it is allegit, that WITNESSES aucht to be reffaut vpone this allegiance, anfueris, na Witneffes can be reffaut in Criminall cauffis, conforme to the Lawis of this realme, except in matteris of Treffone: And albeit Witneffes mycht be reffaut, yit thay can nocht be reffaut vnto the tyme the allegiance be firft ffund relevant; and gif it war ffund relevant, thair aucht na Witneffes be reffaut befor the Affyse, feing the haill poyntis confiftis *in facto*, and the tryell thairof is remittit to the Affyse, quha becumis bayth tryeris and Witneffes thairin:² And as to the Lordis deliuerance grantit for fummonding the Witneffes, it aucht nocht to be respectit, becaus it is privat, and grantit be the Lordis *parte non citata*. As to the laft allegiance, beiring, that na man fould be pwneift to the daithe, except it be done vpone ffoirthocht fellonie, the perfewer denyis that propofitioun altogidder, in respect of the vniverfall pratique of this realme; be the quhilk, all perfones criminallie perfewit for Slauchter ar put to the knowlege of ane Inqueift, and pwneift to the daithe; this lybell contenand ane verrie relevant caufe, qualifeit with all the circumftances neceffar aganis the pannell, as committer of the Slauchter, with all circumftances of the Law requifite.

It is duplyit, that Witneffes may be examinat befor the Affyse, vpone the treuth of the exceptioun peremptour; and being remittit be the Judge, with the lybell, to the Inqueift, thay may cognofce thairupoun, and vpone the Witneffes Depofitiones, fa far as the famyn may geue thame licht concerning the fact: And be fpeciall Act of Parliament, maid in his Maieftis xj Parliament,

¹ Represented. Literally, complained.

² For an elucidation of the ancient practice upon this point, reference is made to Mr Hume's valuable Commentaries on the Criminal Law of Scotland. The present case affords ample illustration of the doctrines held relative to the Law of Evidence, in matters Criminal, at the commencement of the Seventeenth Century.

cap. 90, it is statute, that all writtis, Witneses, and other probatioun, fall be led and deduced befor the Assyse, and that for tryell of the treuthe, *quia probationes in criminalibus debent esse luce meridiana clariores*: Lyk as, Witneses war admittit in the Criminall cause persewit be *Strauchane* aganis *Geillis Johnnestoune*. And quhair it is affirmet, that the Warrant is purchest for summond-ing of Witneses, *parte non citata*, it is nocht ane Warrant against justice, bot for fortherance of justice, and cleiring the treuthe. And as to the last, the samyn is foundit vpone tua Actis of Parliament, quhilk can nocht be derogat be ane contrair custome; lykas, my lord Aduocat is nocht hable to schaw quhair this exceptioun, being proponit, was repellit.

INTERLOCUTOR of *Relevancy*.

THE Justice REPELLIS the haill allegeance, in respect of the Dittay, and answaris maid be my lord Aduocat in fortificatioun thair of. And Ordanis the Dittay, quhilk is ffund relevant, to pas to the knowlege of ane Assyse.

Quhairupoun my lord Aduocat askit instrumentis.

THE Justice, in respect thair is nocht ane number of substantialious perfones, landit men, accoirding to the qualitie and rank of the defender, present, to pas vpone his Assyse, Continewis all forder tryell of this matter to the thrid day of the nixt Justice-air of the scherefdome quhair the defender duellis, or soner, vpone fyftene dayis wairning: And ordanis the pannell to find caution for his re-entrie to that effect, vnder the panes contenit in the Actis of Parliament; with this restrictioun, that na Letteris be direct furth in this matter befor the first day of Junij nixt.

Quhairvpone the said James Scrymgeour, defender, askit instrumentis; and quha, for obedience of the said Justice ordinance, ffand Johnne Scrymgeour of Ballanscho cautioner, to the effect, and vnder the panes foirsaid.

[*Mr Patrik Sandis, Justice-Depute.*]

Slaughter committed at a Bridal.

Jan. 29.—JOHNNE SWYNE, fervand to the Laird of Randiefurd.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} Johnne M^ccairtour, fervand for the tyme to Jonet Mayne, wedow, in Menstrie, be streking him with ane durk in the bellie, quhairof he deceiffit; committit at ane brydell,¹ in the evening eftir supper, within the sayd Jonet Maynes duelling-hous, vpone the xxij day of December last, being Tyfday befor 3ule.²

PERSEWAR, Gilchryft M^ccairtour in Buttergask, as father.

The pannell confessis the cryme, and cravis Godis mercie and pardoun for the samyn.

VERDICT. The Assyse, all in ane voce, ffand, pronuncet, and declairit the said

¹ Bridal (*bride-ale*), wedding.

² Yule, or Christmas.

Johnne Swyne, conforme to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of the said Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body; and all his moveabill guidis to be escheit, &c.

Child-Murder.

Jan. 29.—BESSIE WEIR, fervand to James Lowriestone in Over Gogar.

Dilaitit of the crewall and vnnaturall Murthour of hir awin infant bairne, borne and brocht furth be hir, in fornicatioun, to James Threipland in Biggar; committit vpon the xx day of Januar instant, about midnight, within ane zaird lyand to the said James Lowriestones hous in Over Gogar, immediatlie eftir hir delyuerie thair of.

VERDICT. The Assyse, all in ane voce, be the mouth and declaration of Robert Wilkie in Rathobyres, chancellor, in respect of the said Bessie hir Judiciall Confessioun of the said cryme, ffand, pronuncet, and declairit her to be culpable and convict thair of.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair hir heid to be strukin frome hir body; and all hir guidis, gif scho ony hes, to be escheit, &c.

[*Mr Alexander Coluill, Justice-Depute.*]

Slaughter.

Feb. 3.—HABBIE RAE in Moufwall, Pait M'keg, servitour to the Laird of Lag, and twenty others.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Carutheris, callit of Dormont; committit vpon the secund of Januar last, with schottis of hagbutis and pistolettis, within the dwelling-hous of Johnne Mundallis in Torthorrell.

PERSEWARIS.

Margaret Johnnestoun, as mother; Frances Carutheris, as brother; Sir Williame Oliphant of Newtoun, kny^t.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr James Hammiltoun.

Continued to the Justice-air of Dumfries, 'tertio Itineris, vel super premonitione xv dierum.'

Slaughter.

Feb. 3.—JAMES DOUGLAS of Moufwall; Johnne and Williame Greir-fones, his fervandis; Johnne Carleill, sone to Thomas C. in Bankis; Johnne Blak in Moufwall; and Habbie Dikfone, thair.

Dilaitit for the above Slaughter. These persons were all 'denuncet rebellis, and put to the horne, for nocht finding of caution for thair personall compeirance.'

(Jul. 21.)—CONTINUED to the air of Dumfries, *tertio Itineris*, &c. Johnne Lord Fleming, cautioner.

[*Mr Alexander Coluile of Blair, Justice-Depute.*]

Slaughter.

Mar. 10.—MR THOMAS DOUGLAS, Minister at Balmirrienoche.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Thomas Creichtoun of Bodumcraig; committit betuix Balmirrienoche and Couper in Fyfe, vpone the xiiij day of Februar last, 1619.

THE Justice, in respect of the seiknes of Jeane Carmelie, the defunctis relict, quha can nocht be present to concur in this persute, continewis this matter to the thrid day of the nixt Justice-air of the Scheref dome of Fyfe, or soner, vpone fyftene dayis wairning: And ordanis the pannell to find caution for his re-entrie; quha ffand James Douglas of Moirtoun, portioner of Gogar, &c.

Treasonable Murder under trust, credit, and assurance.

Apr. 2.—JOHNNE MAXWELL of Garrarie, and George Maxwell, his sone.

Dilaitit of the crewall and odious Murthour under trust, credeit, and assure-
ance, of vmq^{le} Johnne M^cKie of Glashek; committit vpone the viij day of Julij 1618; in forme and maner specifeit in the Dittay producet against thame, viz.

DITTAY against Johnne Maxwell of Garrarie, and George Maxwell, his sone.

FORSAMEKILL AS, in the ellevint Parliament haldin by our souerane Lord and Estaittis of this kingdome, att the burgh of Edr, the xxix day of Julij, 1587, cap. 51, it is statute and Ordanit, that the Murthour and Slauchter of quhatsumeir his Maiesteis legis, quhair the pairtie flane is vnder the trust, credeit, assureance, and power of the slayer, all sic Murthour and Slauchter to be committit eftir the dait of the said Act, the samyn being lauchfullie tryed, and the persones dilaitit fundgiltie thair of be ane Affyse, fall be Treffone; and being ffund culpable, fall fforsalt lyfe, landis, and guidis; as in our said Act of Parliament at mair lenth is contenit. AND trew it is, that the said *Johnne Maxwell of Garrarie*, haifing, in his politique and craftie maner, vpone sic conditiones of satisfacioun and recompence best knawin to him self, conquest and acquyrat fra the said vmq^{le} *Johnne M^cKie of Glashek* his hail worldlie moyane¹ and estait; and thairby drawin him to his daylie companie and attendance, alswell within his hous of *the Garrarie*, as vther pairtis of the cuntrie quhair he maid his repair and residence, he, furth of his avariciouse and churlische dispositioun, lotheing and weireing² of the said *Johnne M^cKie* his companie, in the moneth of Julij, in the yeir of God I^m.Vj^e. and aughtene yeiris, to red and exoner him self of his cumpanie, devyset and concludit in his devillische heart, the pitifull³ and treffonable Murthour of the said vmq^{le} *Johnne M^cKie*, as followis; and finding the said vmq^{le} *Johnne* to be alwayis under his trust, credeit, assureance, and power; in sa far as, be the space of nyne monethis, or thairby, preceeding the tyme foirfaid of the said intendit Murthour, the said vmq^{le} *Johnne* was for the maist pairt resoirting and making his daylie residence with him, at bed and buird, within his *Place of Garrarie*, sua that thairby na suspitioun of iniurie to be done be the said *Johnne Maxwell* towardis the said *Johnne M^cKie* could be thocht vpone be him; the said *Johnne Maxwell*, for effectuating of his treffonable and devillische plott, vpone the xvij day of the said moneth of Julij, in the yeir of God foirfaid, knawing the tyme of the said vmq^{le} *Johnne M^cKie* his dyet, in cuming to his *Hous of Garrarie*, vnder the filence and clud of nycht, accompaneit with the said *George Maxwell*, his sone, and vtheris thair complices, bodin⁴ with suordis and vtheris wapponis *inuafivé*, in the said vmq^{le} *Johnne* his cuming to the said *Place of Garrarie*, pat violent handis in his persone, band baith his handis and

¹ Means.

² Getting fatigued or wearied.

³ Piteous.

⁴ Furnished; provided.

feitt, and thaireftir, in maift crewall and mercieles maner, playing the pairt of hangmen and burriowis,¹ with ane hair tedder,² strangillit and wirreit him to deid; and haifing, be that violent and crewall meane, bereft him of his lyfe, thay thaireftir cayreit him to ane peit mofs or burne, callit *the Burne of Ranieftoun*, within ane half myle to the faid *Hous of Garrarie*, quhairin they flang him: And fa, the faid vmq^{le} *Johnne McKie of Glassak* was maift treffonabillie and crewallie murdreift and flane be the faid *Johnne Maxwell of Garrarie*, and *George Maxwell*, his fone, he then being vnder thair trust, credeit, affurance, and power, in maner befor deducet; and thay, and aither of thame, ar airt and pairt of the faid treffonabill and barbarous Murthour, committit vnder trust and credeit; vpone fet purpois, prouifioun, precogitat malice, and foirthocht fellonie, in hie and manifest contempt of our fouerane lordis authoritie and lawis, and expres aganis the tennour of the faid Act of Parliament; incurring thairthrow the pane and pwneifchment aboue writtin, expreffit thairintill, viz. as *Tratouris* and *Murthouraris* of the faid vmq^{le} *Johnne McKie*, vnder trust, to fforfalt thair lyvis, landis, and guidis, to the terroure and example of vtheris to attempt the lyk heireftir.

PERSEWARIS, Niniane McKie, eldest fone to the defunct; Sir Williame Oliphant of Newtoun, kny^t,
Aduocat to oure fouerane lord.

PRELOCUTOURIS in defence, Mr Alex. Peiblis, Mr Laur. McGill, Adame Cunninghame, Aduocattis.

The Aduocat producet his Maieftis Warrant, daitit at New-mercato, the 13 of Januar, 1619, commanding him to infist in the pannellis perfute, for the Murthour contenit in the Dittay: Quhilk Warrant his lordfchip tuik vp agane.—My lord Aduocat declairis, that he is nocht prepairit, at this tyme, to perfew in this matter; and thairfoir defyret the famyn mycht be continewit to the fevint of July nixt.—The pannell, with thair prelocutouris, altogidder difassentis to the faid continuatioun, and offerit thame felffis instantlie reddie to abyde the tryell of the Law for the faid cryme, as altogidder innocent thairof; and thairupoun askit instrumentis.

THE Justice, nochtwithstanding of the pannellis offer and declaratioun, continewis this dyet to the faid fevint day of Julij nixt; and Ordanis the pannell to be tane bak to waird to the tolbut of Edinburgh.

The pannell offeris cautione for thair compeirance the faid day; and allegit, in respect thairof, thay fould nocht pas to waird.

THE Justice Ordanit thame to geve in their Supplicatione to the Counfall, be quhais Warrant and authoritie thai war committit, and to crave thair libertie and fredome furth thairof, vpone thair offer of cautione to thair lordfchipsis, for thair entrie, the day foirfaid; and accoirding as the Counfall fould command, in that matter, it fould be obeyit.

PRELOCUTOUR in defence, My Lord Maxwell.³

(Jul. 7.)—THE JUSTICE, be directioun of the Lordis of Secreit Counfall, and conforme to thair Lordfchipsis expres Warrant, continewis this dyet, and all tryell to be tane thairintill, to the xv day of December nixtocum: And Ordanis the pannell to find cautione for thair compeirance and re-entrie that day, to vnderly the law for the faid Murthour, ather⁴ of thame vnder the pane of thre

¹ Old Fr. *bourreau*, an executioner.
Prelocutors.

² A hair tether or halter.

³ In addition to the above

⁴ Each of them.

Thowfeand merkis. Quha, for obedience of the faid ordinance, fand Eduard Maxuall of Hillis caution.

In respect of the quhilk caution fund be thame, the Justice ordanit the Provost and Bailles of Edinburgh to put them to libertie furth of thair waird, &c.

[ASSESSORES JUSTICIARIO, *Dominus Willielmus Levingstoun de Kilfith, et Dominus Georgius Erskin de Innerteill, Senatores Collegij Justicie.*]

PRELOCUTORIS in perfute, My Lord of Gairleis, The Laird of Larg-McKie.

PRELOCUTORIS in defence,¹ The Maister of Maxwall; The Guidman of Hillis; Edward Forrester, Commiffar of Kirkcudbrycht; Johnne Zoung, notter.

(Dec. 15.)—THE pannell takis instrumentis of thair entrie; as also, that *my Lord of Gairleis* compeiris to perfew thame of thair lyves; and protestis for thair cautioneris releif.—The perfewaris producet the Dittay, with the Letteris and Roll of Affyse; and protestis for thair cautioneris relief, and defyret proces.

The perfones on pannell denyis the haill crymes contenit in the Dittay, and passis fra all disputatioun aganis the relevancie thair of; and offeris thame felffis to the tryell of ane honest and vnsuspectit Affyse.

ASSISA.

Johnne Dalrumple of Schalloche,	Johnne Maitland of Clonhie,	Andro Craufurd of Barquharrie,
Andro Bruce of Bofark,	Johnne Kirkpatrik of Bracho,	David Welfche of Colliestoun,
Williame Middlemeist, Conftable	Gilbert Baird of Kilhinzie,	Walter Cant of Waft-mylne,
of Dumbartene,	George Logane of that Ilk,	James Birnie of Browbrie,
Duncane Hunter of Ballagane,	Williame Cunninghame of Pol-	Malcolme Dalrumpill of Water-
Williame Creichtoun of the Hill,	quharne,	fyde.

It is allegit be the pannell, that *Johnne Dalrumple* can nocht pas vpone thair Affyse, becaus he is nocht ane landit man of that qualitie and rank quhilk fould be admittit to pas thairupoun; the faid Johnne Maxwall of Garrarie being ane landit Gentilman, in the rank of ane Barroun, worth thre thowfeand merkis of zeirlye rent, and aboue. *Secundo*, the faid Johnne is vset and producet be my Lord of Gairleis, ane of his perfewaris, as ane Witnes befor the Counsell, and hes gevin his Deposition in this matter alreddie; and in respect thair of, can nocht be ane Affysour. *Tertio*, he is man, tennent, and fervand to *Josiah Stewart*, quha hes assistit this perfute fra the first begynning thair of, and behavet him self as pairtie.—It is anfuerit be my lord Aduocat, that the allegiance aucht to be repellit, as altogidder irrelevant, the faid *Johnne Dalrumple* being ane Gentilman of guid fame, and haifing sufficient moyane of his awin, quhairupone he levis: And his Deposition maid be him as ane Witnes can nocht stay him to be ane Affysour: And as to that pairt, that he payis maill and deutie to *Josias Stewart*, wha is pairtie aganis thame, *non relevat*, becaus he is nocht ane perfewar, nor compeiris nocht in this Judgement to perfew, nather payis he ony deutie to him bot for his teyndis, quhilk teynd-deutie can nawayis stay him to pas vpone this Affyse.—It is allegit be the pannell, that, with the teynd-deutie, he is also subiect to the faid *Josias* in daylie seruice.—The faid *Johnne Dalrumple* being fuorne, declaris he is no forder subiect to *Josias*, bot only in payment of his teynd.

THE Justice admittis *Johnne Dalrumple*, and Ordanis him to be purget of partiall counfall; quha, being of new fuorne, declarit he had gevin na partiall counfall, in this matter, in fauouris of this perfewar aganis the perfonis on pannel;—quha was thairfoir admittit.

It is allegit aganis *Walter Cant of Westmylne*, that he can nocht be admittit vpone this Affyse,

¹ In addition to the Prelocutors who are already noted, under date, April 2, and Jul. 7.

becaus he is nocht duelland within Galloway, nor the foure halfis thairabout, conforme to the Act of Parliament, in anno 1579.—It is anfuerit be my lord Aduocat, that the allegiance aucht to be repellit, becaus he is duelland within Scotland; and the Act of Parliament citet is only in matteris of Perambulation, for tryell of methis and marches, and is nocht extendit to the crymes of Slauchter and Mutilatioun, &c.—It is allegit, that he can nocht be admittit, becaus of the foirfaid Act of Parliament, for *ex argumento a paritate rationis*, gif the perfones of Inqueist, in matteris of Perambulation, man (*must*) be induellaris within the boundis of the Scheref dome quhair the landis lyis, or foure halfis about, *multo magis*, in tryell of a Slauchter or Murthour committit, fould the Affyfouris be induelleris within the boundis of the Scheref dome quhair the fact was done, or four halfis about.—Anfueris, *Statuta sunt stricti juris, et non admittent extensionem*.

The lyk exceptioun proponit aganis *Andro Bruce of Bofark*, quha duellis nocht within the Sheref dome, or foure halfis about.—My lord Aduocat repeatit his former anfueris for *Andro Bruce*.

It is forder allegit that *Walter Kant* is man, tennent, and fervand to *my Lord of Murray*, quha affistis this perfute; and thairfoir, can nocht pas vpone this Affyse. The said Walter being fuorne, gif he be man, tennent, or fervand to the Erle of Murray? Declairis, he is ane of his Lordschipis vassallis, and haldis his landis of him in ffew.

THE Justice, nochtwithstanding of the former allegiances maid aganis the saidis Walter and Andro, and that the said Walter is ane ffewar, Admittit thame vpone the Affyse.

It is allegit aganis *Duncane Hunter of Ballagane*, that he can nocht pas vpone this Affyse, becaus he is ane removeable tennent to the *Laird of Drumlangrig*, quha affistis this perfute, and is within degreis-defending to the *Lord of Gairleis*, persewar. The *Laird of Ballagan* being fuorne, declairit that he is *Drumlangrigis* vassall, and na remoueable tennent; quhome the Justice, in that respect, admittit.

It is allegit aganis *Eduard Maxwell in Laroche*, that he can nocht pas vpone this Affyse, becaus *non habet in bonis*, and is nocht worth the Kingis vnlaw. *Secundo*, thair is bluid and deidlie ffeid standing betuix the pannell and him vnreconceillit. *Tertio*, he is alreddie ressaunt witnes, and hes deponit in this matter, being producet be *my Lord of Gairleis* to that effect.—Anfueris, becaus he hes alreddie deponit as ane Witnes, he may the mair cleirlie be admittit ane Affyfour.

THE Justice, in respect thair is na penurie of Affyfouris, Ordanis him to stand by.

David Welsche of Colliestoun admittit, of consent.

THE lord Aduocat, for verificatioun of the Dittay, producet ane Testimoniall, subscryuit be dyuerse Gentilmen and vtheris, testifeing the forme of *Glassakis* binding, the tyme of his out-taking of the burne; and that he hes bene first strangillit, befoir his casting thairin. As lykwayis, producet the pannellis Depositione, with the Depositiones of dyuerse famous Witneses, ressaunt and examinat be the Lordis of Secreit Counsell, in that matter; and thairupoun also askit instrumentis; and protestis, in respect thairof, for Wilful Errour, gif the Affyse acquit.—The pannell protestit in the contrair, gif thay convict thame of that detestable cryme; quhair of, vpone thair kneis, with grit and soleme aithes, thay affirmet thame selffis to be altogidder innocent.

VERDICT. The Affyse, for the maist pairt, be the mouth and declaratioun of William Cunninghame, chancellor, ffand, pronuncet, and declairit the saidis *Johnne Maxwell of Garrarie*, and *George Maxwell*, his lauchfull sone, to be GILTIE, culpable, and convict of airt and pairt of the treffonabill and barbarous

Murthour of the said vmq^{le} *Johnne M^cKie of Glassak*, committit be thame in forme and maner specifeit in thair Dittay.

SENTENCE. The Justice, be the mouth of Andro M^ccairtney, dempster of Court, adiuget thame to be tane to the Mercat-Croce of Edinburgh, and thair, thair heidis to be strukin frome thair bodeis: And all thair landis, heritages, tenementis, annualrentis, takis, steidingis, rowmes, possessiones, coirnis, cattell, inficht pleneiffing, guidis, and geir, to be fforfalt and escheit to our souerane lordis vse, as culpable and convict of the said treffonable and detestable cryme: Quhilk was pronuncet for Dome.¹

Hurting and Wounding.

Jun. 2.—NORMOND ROBIESOUN, sone to Robert Robiesoun, mercheand burges of Sterling.

Dilaitit of airt and pairt of the Hurting and Wounding of Johnne Robene, sone naturall to Johnne Robene, notter, burges of Sterling, in the casting of him down to the grund, and louping vpone his bak with the haill force of his body; and thairthrow breking of his bak-bone, and mutilating and making him impotent thairof, he being ane young boy of nyne yeiris of age, or thairby; committit in the Valay of Sterling, in the moneth of September, 1617 yeiris.

PERSEWARIS, Johnne Robene and his father; Sir Williame Oliphant, kny^t.

PRELOCUTOR in defence, Mr Thomas Nicolfoun, elder, Aduocat.

THE Justice continewis this dyet to the thrid day of the air of the scherefdom of Sterling, or soner, to ane fyftene dayis wairning; and ordanis the pannell to find caution for his re-entrie. Robert Robiesoun, mercheand, his father, becomes cautioner.

Slaughter.

Jul. 2.—JOHNNE M^cDOWELL of Freuche.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} Alexander M^ckie of Balfeir.

PERSEWAR.

Sir Williame Oliphant of Newtoun, kny^t.

PRELOCUTOR in defence.

Mr Thomas Hoip.

THE Justice continewis this matter to the thrid day of the nixt Justice-air of

¹ Sir Johnne Dumbar of Mochrum, kny^t; James Kennydie of Crugiltoun; Alex. Dumbar, appeirand of Mochrum; Hew Kennydie of Areis; Adame Ahannay, burges of Wigtoun; Robert Maxwell of Barvannok; Vthreid Campbell of Areis; Johnne Carutheris of Wadfute; Harie Cunninghame of Kildonnane; Johnne Broune, 3ounger of Carlslyre; George Gordoun of Barskeoche; Johnne M^cdowell of Freuche; Patrik Ahannay of Kirkdaill; Alex. M^cculloche, appeirand of Netoun; Alex. Cunninghame of Powtoun; Fergus Dumbar, burges of Stranraer; and Adame Lyndsay, burges of Quhithorne, vnlawit, for thair nocht compeirance vpone the said Affyse; ilk ane of thame in the pane of ane hundredth merkis.

the scherefdome quhair the pannell duellis, (Wigtoun,) or soner, vpone xv dayis wairning. Plegio, Pat M^cdowall de Creoches.

Hurting and Wounding—Masterful Theft and Stouthreif.

Jul. 11.—JOHNNE MURRAY, sone to Thomas Murray, in the Stanehous of Geicht.

Dilaitit of the invading of Andro Meldrum of Rothiebirsbane, his maister, in cuming out the hie way betuix Kynroschyre and the fferrie-syde : Hurting and Wounding him, with ane suord, in the heid and face, of purpois to haif slane him : And thaireftir, Steilling and away-taking, be way of maisterfull Thift and Stouth-reif, of his maisteris bonnet-caice, togidder with tua pair of filk schankis,¹ tua pair of filk gairtanes,² tua pair of roses³ of taffitie, tua small lynning schankis, thre bonnet mutches,⁴ thre pair of handis,⁵ fyve overlayeris,⁶ ane peirlet lane⁷ ruff, tua naipkynnis, ane kame-caife,⁸ with ane brusck, with certane vther necessaris, being within the samyn, worth tua hundreth pundis ; by and attour⁹ certane writtis and eidentis,¹⁰ being also thairintill ; committit in the moneth of Maij last.

PERSEWARIS, Mr Andro Meldrum of Rothiebirsbane ; Sir Williame Oliphant of Newtone, kny^t.

THE Justice, in respect thair is nocht ane sufficient number of Assyse compeirand, continewis this dyet to the xxj instantis : And Ordanis the pannell to be tane bak to waird, to the said day.

Andro Frafer of Staniewoid, William Keyth of Seatoun, James Seatoun, brother to the Laird of Mony, Mr Robert Elphingstoun, Tutour of Glak, Johnne Ogilvie, 3ounger of Glaffall, and Alexander Frafer, indueller in Leyth, nocht compeirand on Assyse, the Justice ordanit ilk ane of thame to be vnlawit in the pane of ane hundreth merkis.

ASSISA.

Robert Frafer of Durres,	James Hervie of Elrig,	Nicoll Zule, mercheand,
James Cheane, in Elrig,	Andro Hervie, his brother,	Johnne Penman, mercheand,
Mr Robert Elphingstoun, Tutour	James Keith of Craig,	Mathow Bailzie of Littilgill,
of Glak,	Mr James Stewart, Commiffar	Johnne Fairholme, mercheand,
James Gairne of Blakfurd,	of Dunkeld,	Thomas Broun, lokfmyth.
Johnne Arbuthnot of Carnegaw,	Clement Russell, mercheand,	

Jul. 21.—THE Aduocat takis instrumentis of the sweiring of the Assyse ; and producet the pannellis Depositiones, for verificatioun of the Dittay ; and protestis for Wilfull Errour, gif thay acquit, &c.

VERDICT. The Assyse, be the mouth of the said Mr Robert Elphingstoun,

¹ Silk stockings. ² Garters. ³ Rosettes for the knees. ⁴ Caps. ⁵ Probably a sort of *mittens* or gloves. ⁶ A broad folding collar, falling over the shoulders and worn below the ruff, which was fastened about the neck. ⁷ A pearled lawn ruff ? ⁸ Comb-case. ⁹ Over and above. ¹⁰ Writings and Title-deeds.

chancellor, ffand, pronuncet, and declairit, all in ane voce, the said Johnne Murray, conforme to his awin Judiciall Confessioun and Depositiones producet, to be ffylet, culpable, and convict of the haill crymes aboue expremitt.

SENTENCE. To be tane to the mercat croce of Edinburghe, and thair to be Hangit, quhill he be deid, and all his moveable guidis to be escheit, &c.

Taking the King's Free Liege—Famishing one of the Lieges to Death 'in privato carcere.'

Nov. 10.—PATRICK COWIE, in Kincairdin; Johnne Dow, his fervand; Johnne Anderfone, cordiner thair; Thomas Cowie, querriour thair; and David Miller, salter in Eifter Kincairdin.

Dilaitit of the taking and keiping of vmq^{le} Thomas Daudsfoun, hynd and fervand to Alexander Leask, in Porter, be the space of fyftene dayis, *in privato carcere*, within the said Patrik Coweis hous; and thairfra cayreing him to the pitt of Tullieallane, quhair, throw want of intertenement,¹ he ffamifchet and deit of hunger; and remanent crymes contenit in the Letteris.

PERSEWARIS, Sir Williame Oliphant, kny^t; Alexander Leask, as Maister.

The Justice continewis this matter to the thrid day of the nixt Justice-air of the Scheref dome quhair the defenderis duellis, ('Clakmannane,') or soner, vpone xv dayis wairning: And Ordanis thame to find new caution, &c.; quha ffand Sir George Bruce of Carnok, kny^t, personallie present, for thair re-entrie.

Mutilation and Demembration.

Nov. 17.—WILLIAME OLIPHANT of Gask.

Dilaitit for airt and pairt of the Demembering of David Malloche, fervand for the tyme to vmq^{le} David Toscheoche of Monyvaird of his rycht hand.²

Compeirit Lawrence Oliphant of Coudie, and producet ane Warrant of the Lordis of Secreit Counfall, direct to my Lord Justice; quhairof the tennour followis.

WARRANT of the Lordis of Secreit Counfall.

JUSTICE, Justice clerk, and your deputtis. Forfamekill as the xvij day of November instant is appointit to Williame Oliphant of Gask, for his compeirance befor you, to vnderly the Lawis for the Mutilatioun and Dismembering of David Malloche: Nochtwithstanding, accoirding to the Kingis Maiesteis expres Warrant, command, and directionis in this matter, thease ar to command you to continew the said dyet to the tuentie fyve of Februar nixtocum; to the effect, in the meane tyme, the said Williame may tak some course for satisfactioun of his pairtie: And that you tak caution of the said Williame for his personall compeirance the said day, and dispense with him and his cautioner for his nocht compeirance at this dyet: Quhairanent thir presentis falbe your Warrant. AT ED^B, the xvj day of November, 1619.

AL. CANCELL^s. MAR. MELROIS. LAUDERDAILL.

THE Justice continewis the said dyet to the said xxv day of Februar nixtocum;

¹ Sustenance.

² See Jul. 29 and Dec. 4, 1618.

³ Peter Oliphant of Rescobie.

and Ordanis caution to be fund for the said Williame Oliphant his compeirance that day, &c.—Gilbert Adamefoun of Scoureing-burne become fouertie, &c.

(Feb. 25, 1620.)—COMPEIRIT Laurence Oliphant of Condie, and producet ane Warrant of the Lordis of Secreit Counsell, quhair of the tennour followis.

JUSTICE, Justice clerk, and your deputtis. Quhair as, the xxv day of Februar instant is appointit to Williame Oliphant of Gask, for his compeirance befor you, to vnderly the law for the slauchter of the Laird of Monyvaird, and mutilation and demembring of David Malloche, his fervand, of his rycht hand,¹ and vtheris crymes specifeit in the Letteris raisit thairanent: Neuertheles, this is to command you to continew the said dyet to the nynt day of Junij nixtocum, vpoun new caution, conforme to the ordour: And that you dispens with the personall compeirance of the pairtie: Quhairanent thir presentis fall be your Warrant. At Halyrudhous, the xxiiij of Februar, 1620.

AL. CANCELL^s. MAR. MELROIS. LAUDERDAILL.

Sir Johnne Carmichell of Medowflat, Capitane of Craufurd, becomes fouertie, &c.

(Jun. 9, 1620.)—THE dyet deserted, by command of another Warrant, signed 'Al. Cancell^s. Melrois.'

[IF it were necessary still farther to prove the melancholy effects of the DEADLY FEUDS which raged in Scotland previous to the Eighteenth Century, perhaps few better illustrations could be adduced than what is contained in the present Case. The following affecting document is taken from the *Denmylne MSS.*, and requires no comment.]

LETTER, *the Privy Council of Scotland to the King, relative to the DEADLY FEUD between the Lairdis of Cultmalundie and Monyvaird.*²

MOST SACRED SOUERANE,

WHEREAS your MAIESTIE was pleasit, tua yeiris syne, or thairby, to recommend vnto ws the fatling and remoueing, by ane amicable forme and maner, the deadlie ffeade standing betuix THE LAIRDIS OF CULTMALINDIE and MONYVAIRD and thair ffreindis,³ vpoun occasioun of the slaughter of THE LAIRD OF MONYVAIRD; and to move the pairtie greeued to accept of suche OFFERIS as the offenderis might reafounable performe: WE accordinglie wrote for sa many of the ffreindis as we know to haif cheif intereffe in that mater, and vfed the best meanes we could to haif broght the same to some freindlie dresse; bot that dyet being cassin af, vpoun alledgeance that some of the speciall ffreindis wer omittit and not writtin for, we appointit a new dyet, and wrote for the whole ffreindis that wer gevin vp, who returnit thair answer to ws, in write, vnder thair handis, that thay could not medle in that mater, nor tak burdyne for *Monyvaird*, who is the principall pairtie haueand intereffe, in respect of his minoritie. Whairupoun the mater desertit, and we could go no forder thairin. At this secund dyet *Cultmalundie eldair* exhibit befor ws OFFERIS, in write, vnder his hand, maid to the pairtie, contening the fowme of ane Thowsand crownes for the Assythement of that Slaughter, with the Banishment of *Alexander Bruce his sone*, and *George Tyrie*, Messinger, who wer alledgeit to be the actuall slayaris of *Monyvaird*, during your MA^s plesour: And at that same tyme, we caufit him gif satisfacioun to *Duncane Campbell* and *David Malloche*, who wer deadlie hurte quhen *Monyvaird* was slayne, by payment making to thame of twa Thousand pundis: Quhairupoun thay haif gevin ane discharge of thair intereffe in that mater; as the same produceit befor ws beiris.

¹ The local saying,—

'AFF HANDS IS FAIR PLAY—DAVID MALLOCH SAYS NAY!'

seems quaintly to allude to this incident.

² *Sir James Balfour's MS. Collections*, Adv. Lib.

³ Blood-relations.

This ffeade has altogidder vndone *Auld Culmalundie*; for his eftait is exhaustit and wrackit, and he is become verie waik of his judgement and vnderftanding, by the greif that thir troubles hes broght vpoun him; whilkis wer the occafion of his wyffis deathe, and of the exyle and banifhement of his fones and freindis, now be the fpace of foure yeiris; in the quhilk exyle, tua of his freindis of goode rank and qualitie hes depairtit this lyffe.

This being the effect of oure dealing in this buffynes, We haif beene intreated be the pairtie, humelie to prefent the fame to your Maieftis confideratioun. And fo continewing our vnceffant prayeris vnto God for youre MA^s long and happie reigne, We reft,

YOUR MA^s humbill and obedient fubiectis and feruitouris,

AL. CANCELL^s. MAR. MELROS. GEORGE HAY.

HALIERUDHOUS, xxj of Marche, 1622.

TO THE KING his moft facred and excellent MAIESTIE.

Taking Captive—Murder—Masterful Theft and Stouthreif.

Dec. 8.—DUNCANE CAMPBELL of Glenlyoun.

Dilaitit of airt and pairt of the violent Taking and Apprehending of vmq^{le} Allane M^crannald in Swynnart, cayreing and keiping him captiue and priffoner ane nycht, within the faid Duncane his Place of Megernie:¹ And for Mordreifing him with durkis, vpone the morne eftir his taking, ane myle or thairby fra the faid Hous: And be way of Maifterfull Thift and Stouth-reif, fteilling and away-taking fra him of his purfe, with ane thowfeand pundis of gold and filver being thairintill; committed in anno 1601 yeiris.

PERSEWAR, Angus M^cRannald of Vlladill, as brother.

THE JUSTICE continewis this matter to the thrid day of the nixt Justice-air of the Sheref dome quhair the defender duellis, (Perth,) or foner, vpone xv dayis wairning.

Archibald Campbell of Glencarradell become cautioner for his re-entrie.

Murder.

Dec. 8.—JOHNNE MOITT in Wafthouffis, aboue Newbottile.

Dilaitit of the crewall and vnnaturall Murthour and Slauchter of Bessie Broun, his vmq^{le} fpous, be ftreking hir in the heid, and wounding hir thairin with ane grit kent,² to the effufioun of hir bluid; committit be him vpone ane Setterday, at evin, in the moneth of October laft; quhairof fcho deceiffit within tuelff houris thaireftir.

PERSEWER, Sir Williame Oliphant, kny^t.

PRELOCUTOR in defence, Mr Alexander Cuming.

It is allegit be the pannell, that na proces can be led aganis him, vnles thair

¹ In Glenlyoun, Perthshire. In the preface to Douglas's *Baronage*, notice is taken of a very remarkable Red-book, (*an Leavar-diarig*,) written in the Celtic character, which was destroyed in the fire which consumed Miggerny Castle. It is there remarked, that 'some extracts from this book are in the hands of several Families in the Highlands.' See likewise, Prefatory Notice to *HISTORY OF THE KENNEDIES*, Edinburgh, 1830. 4to.

² Staff, or cudgel.

war ane pairtie informer to assist his Maiesteis aduocat, and to sueir the Dittay to the Assyse, the Dittay being fund relevant to pas thairto; and seing nane of the kyn and freindis of the woman flane compeiris to persue, or to informe his Maiesteis Aduocat in this persute, the Justice can nocht put him to ane Assyse.—It is answerit be my lord Aduocat, that the allegiance is impertinentlie proponit be the pannell; and sayis, that albeit the freindis of the pairtie flane and he wald collude¹ togidder, yit, seing the Prince wantis ane subject, be the fact committit, the Kingis Aduocat hes verrie guid intreis to persue, without ony informer: And thairfoir, nocht only fould the Dittay pas to ane Assyse, bot he, for committing of the fact lybellit, fould be exemplarie pwneist for the samyn, being fund guiltie thairof.

VERDICT. The Assyse, for the maist pairt, be the mouthe of Thomas Hog, in Eifthouffis, chancellor, fand, pronuncet, and declairit the said Johnne Motte to be ffylet, culpable, and convict of the said Slauchter.—SENTENCE. To be tane to the Castelhill of Edinburghe, and thair his heid to be strukin frome his body; and his haill guidis to be escheit, &c.

Slaughter—Wearing and Shooting of Hagbuts and Pistolets.

Dec. 22.—JOHNNE LYDDELL of Halkerstoun.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Bell, servand to Johnne Lord Borthuik; committit vpone the landis of Hauch-heid, vpone the aucht of October last, quhair the said Johnne Lyddell, with ane charget hagbut in his hand, invaidit the said vmq^{le} Johnne Bell for his slauchter, schote him in his lichting² af his horse with tua bullettis, at the left pape, throw the heart; and slew him with the said schote: And for contravening of the Actis of Parliament, in beiring and schuiting of hagbutis and pistolettis, &c.

The Justice, of consent of aither pairtie, continewis this matter to the nyntene of Januar nixt: And Ordanis the pannell to be returnet to Waird to the Tolbuth of Edinburghe, out of the quhilk he was tane.

PERSEWARIS, Barbara Levingstoun, the relict; Sir Williame Oliphant of Newtoun, kny^t, his Maiesteis Aduocat, for his hienes intreis.

PRELOCUTOURIS in defence, James Lyddell, in Leyth; Mr Johnne Cranstoun, Minister thair; Mr Laurence McGill, and Mr David Prymrois, Aduocattis.

(Jan. 19, 1620.)—IT is allegit be the pannell, that the Dittay in that point thairof, 'airt and pairt,' is nocht relevant, except the persewar condiscend vpone the names of the persones that war complices or affociattis.—Answeris, aucht to be repellit, in respect of the Act of Parliament, sustening airt and pairt to be

¹ Enter into collusion with each other, to defeat the ends of public justice.

² Alighting.

relevant aganis any persone accuset of ane cryme.—The pannell denyis the haill Dittay to be of verritie.

THE JUSTICE remittis the tryell thair of to the Assyse.

Barbara Levingstoun, relict, being solemlie sworne, declairit, that the Dittay is of verritie; and that scho hes just caus to persue the pannell for the Slauchter of hir husband. Quhairvpoun my lord Aduocat askit instrumentis, and Protestis for Wilfull Errour aganis the Assyse, gif thay acquit: As also, tuik instrumentis of the production of the hagbut, quhairwith the said vmq^{le} Johnne Bell was flane.

VERDICT. The Assyse, be pluralitie of voittis, ffand, pronuncet, and declairit the said Johnne Lyddell of Halkerstoun to be Clanget, innocent, and acquit of the said Dittay, and haill crymes aboue writtin mentionet thairintill.

In respect quhair of, the Justice ordanit him to be put to libertie furth of the said Tolbuth of Edinburghe, quhairin he was wairdit, and na langar to be detenit thairintill for the saidis crymes; he making satisfactioun to the javellour¹ for his expensis.

Slaughter.

Jan. 19, 1620.—ALEXANDER GRAHAME, sone to vmq^{le} Daudid Grahame, in Arduthie, and Johnne M^ckane, sone to Williame M^ckane, burges of Montroise.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Mr Alexander Keith, brother to Sir George Keith of Drumtochtie; committit be thame, in companie of Robert Grahame, brother to the said Alexander, vpone the Sandis of Montrois, vnder nycht, vpone the tent of December last.

PERSEWARIS, Sir George Keith of Drumtochtie, kny^t, James Keith of Harviestoun, Mr Williame Keith, brother to the defunct; and Sir Williame Oliphant, kny^t.

PRELOCUTORIS in defence, Mr Alexander Peiblis, Mr Roger Mowat, Aduocattis.

The persewaris producet Hoirning aganis Robert Grahame, sone to Daudid Grahame of Arduthie.

The persones on pannell offerit thame selffis to the tryell of the Law, for the crymes contenit in the Summondis, quhair of thay declairit thame selffis to be innocent; disassenting *simpliciter* to all forder continuatioun.—My lord Aduocat declairis that this Slauchter was committit vnder nycht, quhair of as yit na certane licht of the pannellis guiltines thair of is brokin vp; and thairfoir, desyres thame to be put vnder cautioun, for thair re-entrie, vpone xv dayis wairning.

THE Justice continewis this dyet to the thrid day of the nixt Justice-air of the Scheref dome quhairin the pannell duellis, (Forfar,) or soner, to ane fyftene dayis wairning.

¹ Gaoler; jailer. Old Fr. *javilleur*.

Slaughter.

Jan. 21.—JOHNNE DUNCANE, baxter¹ in Dudingstoun.

Dilaitit of the crewall Slauchter of vmq^{le} Johnne Buchannan, baxter, indueller of the Cannongait; committit in the hie-way betuix Eifter and Wester Dudingstoun, vpon the saxt of Januar instant, be streking of the said Johnne Buchannane with ane knyfe, vnder the left pape; quhairof, within tuelf houris thaireftir, he deceiffit.

PERSEWARIS, Margaret Robertfoun, the relict; Sir Williame Oliphant, kny^t.

The pannell acknowledges the cryme, and craves God, his Maiestie, and the pairtie pardoun thairfoir.

VERDICT. The Assyse, all in ane voce, in respect of the pannellis Judiciall Confessioun maid be him, confessing the said cryme to be of verritie, ffand, pronuncet, and declairit the said Johnne Duncane to be ffylet, culpable, and convict, &c.—SENTENCE. To be tane to the Castell hill of Edinburgh, and thair his heid to be strukin from his body; and all his moveable guidis to be escheit to his hienes vse, as convict of the said cryme.

Murder—Horse-stealing.

Feb. 25.—JAMES REOCHE.

Dilaitit of airt and pairt of the crewall Murthour and Slauchter, vnder nycht, of vmq^{le} Alexander Sandiesone, fervand to Hew Falconer of Innerlochtie; committit in September, vpon Michelmes Evin, in anno 1618, at the zett of Innerlochtie, in staying the said James, and resisting him and his brother in the steiling and away-taking of the said Hew Falconeris horse furth thairof, be schuteing the said Alexander throw the body with ane pistolett.

PERSEWARIS, Hew Falconer of Innerlochtie, his maister; Sir Williame Oliphant of Newtoun, kny^t.

It is alleget be the pannell, that the allegit Slauchter was nocht committit be him; bot the defunct, being ravischeing ane woman, the pannellis brother being thair present, and he in companie with him, imployit thair help to preserve the woman and to set hir frie; for the quhilk, the defunct, haifing ane knyfe in his hand, invaidit the pannellis brother thairwith; quhairupoun the pannellis brother, for his awin saiftie, drew ane pistolet frome his fyde, and schote the defunct thairwith; and sa, the fact being committit be his brother, the pannell can nocht be persewit thairfoir.—It is ansuerit be my lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay beiring him to be airt and pairt of the defunctis slauchter; and that the Slauchter was committit be thame in the steiling of ane horse fra the defunctis maister, haifing cum that eirand to the Hous, at that tyme of the nycht.

¹ Baker.

ASSISA.

Mr James Stewart of Ladywall, Mr James Forbes of Haughtoun, Alex. Farquhar, tailzeour burges of
 Walter Hay in Forrefteris-fait, Johnne Roife, proveift of Nairne, Edinburgh,
 Williame Douglas of Erlesmylne, Mr Daid Stewart, and Johnne Caddell, burges of
 Alex^r Brodie, chalmerlane of Patrik Weymes, fervandis Edinburgh,
 Kinloife, to the Earl of Murray, Alex. Home, burges thair,
 Daid Dumbar in Tarves, Thomas Hunter, burges thair.

The Aduocat takis instrumentis of the fuering of the Affyse; and producet, for instructing the Dittay, the pannellis Deposition, maid in prefens of the Lordis of Secreit Counsell; and protestis for Wilfull Errour, gif thay acquit.

VERDICT. The Affyse, all in ane voce, ffand the said James Reoche to be ffylet, culpable, and convict of airt and pairt of the Slauchter of the said vmq^{le} Alexander, committit vnder nycht, in the steilling of the said Hewis horse.—

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be ftrukin frome his body; and his haill guidis confiscat to his Maiesteis vse.

Hamesucken—Slaughter.

Mar. 8.—JOHNE ROGERSOUN, in Bratmurelland.

Dilaitit of the crewall Slauchter of vmq^{le} Katharene Broun, spous to Hew Broun in Windiehillis,¹ be (by) cuming be (by) way of Hamesuckin to hir duelling hous in Windiehillis, in the moneth of Apryle 1613 yeiris, quhair scho was in sober maner for the tyme; and thair crewallie invalidit hir for hir slauchter, becaus scho had houndit hir dog at his scheip; tuik hir be the spaldis,² and violentlie flang hir over tua kyis³ bakis; thaireftir threw hir fydis to ane tymber bed,⁴ and thairby brak hir haill intrallis within hir; and thaireftir, with his feit and handis, crewallie punschet and ftrak hir vpon the bak, wambe,⁵ and fydis, and brak hir heart-pypes thairwith; sua that thairby scho tuik bed, and keipit the bed the space of fax dayis, or thairby, continuallie vomeiting hir heart-bluid; and in the moneth of Maij thaireftir, scho deceiffit of the saidis hurtis; and sa, was crewallie and vnmerciefullie flane be the said Johnne Rogerfonne: And he is airt and pairt of the said slauchter; committit vpone set purpois, prouisioun, and foirthocht fellonie, as at lenth is contenit in the said Dittay.

PERSEWAR, Hew Broun in Windiehillis, as spous to the defunct.

PRELOCUTORIS in defence, the Laird of Cloisburne; Adame Cunninghame, Aduocat.

The pannell offeris him selff to the tryell of the law for the cryme foirfaid, quhair of he is altogidder innocent.

ASSISA.

Johnne Padzeane, younger of Newtoun, Thomas Wauche, elder of Schawis,
 Mr Alexander Flemyng, minister at Dalgarnok, Thomas Wauche, his sone.⁶

¹ The crime is thus briefly described in another place,—‘be geving hir dyuerse bauch, blae, and bludie straikis, in dyuerse pairtis of hir bodie.’ ² Fr. *épaules*, shoulders. ³ Cows. ⁴ That is, dashed her with violence against or upon a wooden bedstead. ⁵ Belly. ⁶ The rest of the Assise are persons of no note.

VERDICT. The Affyfe, all in ane voce, be the repoint and declaratioun of the said Mr Alexander Flemyng, chancellor, ffand, pronuncet, and declarit the said Johnne Rogerfoun to be Clene, innocent, and acquit of airt and pairt of the slauchter, and haill circumstances thair of specifeit in his Dittay.

Forgery—Falset—Counterfeiting a Subscription to a false Bond.

Apr. 20.—THOMAS DEMPSTER, sumtyme of Muresk.

Dilaitit of airt and pairt of the ffalsiefeing, fforgeing, and devyfeing and counterfuteing of the fubfcriptioun of ane ffalse Band of Reuerfioun, &c. specifeit in his DITTAY following, viz.

FORSAMEKILL AS, albeit the said Thomas, be his birth, was ane gentilman borne, provydit, be vertew of his parentis and prediceffouris, to the fucceffoun and richt of dyuerfe landis, rowmes, and poffeffiones; the quhilkis, be his leud and godles misgovernment, ar maist fchamefullie and vnworthielie spendit and put away, to the impoverifching alfweill of him felff, as preiudice and difapointment of his posteritie: 3IT the said Thomas, altogidder fenfles of that his miserable cairage, nawayis being movet thairwith, bot rather refolveing to rwn heidlongis in all godles and cruiket courfes, as a man fauld and gevin over to the practize of the famyn; amangis vtheris, his vnlauchfull and damnable proceedingis, a fourtene 3eir fyne or pairby, he maist falflie, fraudulentlie, and diffaitfullie plottit, devyfet, forget, and drew vp ane falfe and counterfute BAND, contening the tennour of ane fals and fimulat Reuerfioun, as gif the famyn had bene maid and fubfcriuit be umq^{le} *Walter Barclay of Toweis*, quhais name and fubfcriptioun was alfo falflie counterfute be the said Thomas, with the Witneffes fubfcriptiones infert thairintill; beirand in effect, that the said vmq^{le} *Walter Barclay* confeffit and grantit him to haif reffaut fra vmq^{le} *James Dempfter of Auchterles*, his father, ane Reuerfioun maid and fubfcriuit be vmq^{le} *Patrik Barclay*, sumtyme of *Towie*, his father, in fauouris of vmq^{le} *Johnne Erle of Buchan, Lord of Glendovachie*, fubfcriuit at the *Caftle of Banff*, the firft day of July 1547 3eiris, for redemeing and outquyteing fra the said vmq^{le} Patrik and his airis, *Lairdis of Towie, of the Landis of Collane*, with the ffifcher-heaven and remanent pairtis, pendicles, and pertinentis of the famyn, lyand within the Lordfchip of Glendovachie, and Sherefdom of Banff, vpone payment and delyuerance of ane hundreth angell-nobles gold and wecht; with ane nyntene 3eir Tak, eftir the Redemptioun, contening frie Office and iurifdictioun of Bail3erie, with payment of thre-fcoir merkis, as for the 3eirlie maill thair of allanerlie: And that be vertew of the foirfaid fimulat Band, the said vmq^{le} *Walter Barclay of Toweis* obleift him to delyuer bak agane the famyn Reuerfioun to the said *James Dempfter*, father to the said Thomas, at quhat tyme or how fone it fould happin him, and his airis, to be diffreffit or put at for delyuerie, or exhibitoun of the famyn, be the airis maill of the said vmq^{le} *Erle of Buchan*, and vtheris haiffand richt thairto; and thairwith to pay to the said *James Dempfter* and his airis, the fowme of ten thowfeand pundis of liquidat expenffis, in caice of fail3ie: As the said Band, contening the tennour of the said fals Reuerfioun, with dyuerfe vtheris clauffes at lenth fet down thairintill, all falflie fforget, devyfet, and counterfute, firft be the said Thomas, and thaireftir writtin over at his command and direction be *Airthour Meldrum*, Scule-maifter and Reidar at Kintor, and ante-daitit be him, at the said Thomas command, at Lambes laft, daitit at Mure-efk, the firft day of October 1585, be the fpace of threttie-foure 3eiris of befoir, in the felff proportis. LYK AS, in ane actioun of Improbatioun intentit laitlie befoir the Lordis of Counfell and Seffion, at the instance of *Sir Patrik Barclay*, now of *Towie elder*, and *Patrik Barclay younger* his fone, with concurrence of our fouerane lordis Aduocat, for Improbatioun of the foirfaid Band and Reuerfioun, ingroffit thairintill, the faidis Lordis of Counfell and Seffion, efter tryell tane be them in the premisses, hes ffand and declairit be thair Decreit, gevin vpone

the secund day of Marche instant, conforme to the said *Thomas* awin Confessioun and Deposition, subscryuit be his awin hand, in thair haill Lordschippis prefens, that the foirfaid Band and Reuerfioun foirfaid, ingrossit thairintill, is fals and fenzeit, fallie forget, fabricat, and devyset be the said *Thomas*, and the said *Airthour Meldrum*, at his command and direction: And that the said *Airthour*, be his command and direction, counterfute the names and subscriptiones of *Patrik Chalmer*, *Alexander Fraser*, and *Alexander Watfoun*, thre of the Witneses insert thairintill: And that the said *Thomas* him self counterfute, and pat to with his hand the name and subscription of the said vmq^{le} *Walter Barclay of Towie*, allegit maker of the said Band, with the names of *George Leslie*, and *James Innes*, uther tua Witneses insert thairintill: AND in respect thair of, the samyn Band was, be thair Lordschippis direction, in thair Lordschippis prefens, immediatlie cuttit, cancellit, and destroyit, and declairit to mak na fayeth in judgement, nor outwith, in tyme cuming: AND the said *Thomas*, for his former ffalsett, (was) also Ordanit be the saidis Lordis Decreit to be pwneist in his persone and guidis, conforme to the lawis of this realme; quhilk aucht and fould be execute vpon him with all rigour, to the terrour and example of vtheris to attempt the lyk. As the saidis Lordis Decreit, togidder with the said *Thomas*, his awin and the said *Airthour Meldrumes* Depositiones, confessing cleirly the ffalset aboue writtin, producet be our said fouerane lordis Aduocat with the Dittay aboue specifeit, for verification thair of, at lenth beiris.

The pannell allegit, that in respect the ffalse Reuerfioun quhairupoun he is accuset, was nevir vset nor abiddin at be him, to the hurt of *the Laird of Towie* or ony vther, that thairfoir the Justice could nocht put him to ane Affyse.—It is anfuerit be my Lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay, and of the Lordis Decreit, quhairupoun the samyn is foundit, ffinding the Reuerfioun to be ffalšie fforget be the pannell, and that *the Laird of Toweis* subscription was fallie counterfute, and put thairto be the pannell; and thairfoir Ordaning him to be pwneist, conforme to the Lawis of this realme.

THE Justice Repellis the pannellis allegiance, in respect of the anfuer; and Ordanis the Dittay to pass to ane Affyse.

ASSISA.

George Logane of Bonytoun, elder,	James Halyburtoun, mercheand,	Archibald Law, goldsmyth,
Williame Lauder, bailzie of	Patrik Elis, 3ounger, mercheand,	Harie Hoip, mercheand,
Dumbar,	Capitane Patrik Heiring,	George Hammiltoun, mercheand,
Malcolme Stevinsoun, Tutour of	Johnne Dougall, mercheand,	Eduard Johnnestoun, mercheand,
Hirdmestoun,	Johnne Schaw, mercheand,	Williame Crystiesoun, tail3our.
Michell Ramsay of Forther,	Johnne Smyth, mercheand,	

VERDICT. The Affyse, be the repourt and declaratioun of the said Chancellor, all in ane voce, ffand, pronuncet, and declairit the said *Thomas Dempster* to be ffylet, culpable, and convict of the haill ffalsettis set down in his Dittay aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body; and all his moveable guidis and geir pertening to him to be escheit to his Maiesteis vse, &c.¹

¹ The frequency of the crime of Forgery, during some years preceding the date of this Trial, seems to have induced the Public Prosecutor to make several severe examples. Not a few of the criminals were persons of considerable rank in society, who, by desperate courses, had been reduced to the worst shifts to procure the means of subsistence.

Murder.

Jun. 14.—ROBERT HODGE in Spitteltoun, and James Mitchell, myller at Dalmahoy mylne.

Dilaitit of airt and pairt of the Slauchter and Murthour of vmq^{le} Patrik Mitchell, skynner; committit in Marche last or thairby, be streking him with kentis and flaillis, in dyuerse pairtis of his body, and douking him in the mylneleid or dam of Dalmahoy-mylne; quhairof he within xxiiij houris deceiffit.

PERSEWAR, Johnne Mitchell in Langfyde, as father.

PRELOCUTOURIS in defence, Mr Robert Lermonthe, The Laird of Dalmahoy.

THE Justice continewis this dyet to ffryday nixt.

Jun. 16.—COMPEIRIT Johnne Mitchell, persewar, and declairit that the perfonen on pannell ar altogidder innocent of the crymes contenit in the Letteris; and thairfoir he past *simpliciter* fra thair persute, as innocent thairof.—The pannell takis instrumentis of the persewaris Declaratioun, and passing *simpliciter* fra thair persute; and nochtwithstanding thairof, offerit thame selffis to the tryell of the Law for the said allegit crymes, feing thair is ane sufficient number of honest men heir present, quha war summoned be the persewar to pas on thair Assyse, and quha best knawis the verritie of that matter; and thairfoir, as of befoir, desyret my lord Justice that thai mycht be put to ane tryell, &c.

THE Justice, in respect of the persewaris declaratioun and passing fra the pannellis persute, Ordanis the dyet to desert; and na Letteris to be direct aganis thame, in this matter, in ony tyme cuming, at the instance of thir persewaris.

Murder committed under Trust and Friendship.

Jun. 16.—HARIE GORDOUN of Haddo.

Dilaitit of the crewall Murthour and Slauchter of vmq^{le} Johnne Johnnestoun, servand and neir kynsman to the Laird of Caskieben, be schuiting him throw the body with ane double musket, charget with fyve bullettis, vnder trust and freindschip, at the dur of the said Hareis duelling-hous, the xxiiij of Marche last.

Robert Johnnestoun, in Corhill, as father to vmq^{le} Johnne, togidder with Sir Williame Oliphant, producet the Letteris, deulie execute and indorsate, &c.

THE Justice Ordanit Adame Gordoun of Boighoill, as cautioner, to be vnlawit for nocht entrie of the said Harie, in the pane of Tua hundreth merkis: And siclyk, that the said Harie be denuncet rebell and put to the horne, and all his moveabill guidis to be escheit, &c.

Murder by Drowning, &c.

Jun. 16.—DONALD NEILSONE of Affint, Neill Neilsonne, his sone, and Neill M'Eane Allaster.

Dilaitit for taking vmq^{le} Donald M^cAllafter V^cEane V^cHenrie, binding him hand and fute, and casting him in ane boit; and thaireftir cayreing him to ane craig¹ in the Sea of Clafneffie, in Affint, quhair the fie overflowing the faid craig, he was pitiefullie² drownit and cayreit away to the grit Ocean-fie; and fa, crewallie Murthouret be thame.

Michaell Anderfone, tailzeour in the Potter-raw, as cautioner, amerciatised for nocht repoirting of the Letteres deulie execute and indorfate, and perfewing thairof, purchest at the instance of Johnne M^cAngus V^cHenrie, neir kynnifman of the faid vmq^{le} Donald, viz. 100 merkis for the faid Neill M^cEan Allafter; and for the vther tua defenderis, ather of thame in tua hundreth merkis.

Slaughter.

Jun. 20.—WILLIAME JOHNNESTOUN, elder of Kellobank; Williame Johnnestoun, 3ounger, his fone; and Johnne Johnnestoun, also his fone.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Williame Johnnestoun of Kynnel-heid; committit in anno 1619.

PERSEWAR, Jeane Johnnestoun, as dochter.

ASSISTERIS of the perfute, Robert Johnnestoun, callit of Mossfope, Thomas Johnnestoun of Beirholme, James Johnnestoun of Erschag.

PRELOCUTOURIS in defence, Mr Thomas Nicolfone, elder, Mr Laurence M^cgill (Advocates.)

The perfewaris passis *simpliciter* fra the pannellis perfute, for the crymes foirfaidis: Quhairvpone the pannell askit instrumentis.

Continued, 'for the Kingis pairt,' to the third day of the next Justice-air, or sooner, on xv days warning.

Taking captive and prisoner—Oppression, &c.

Jul. 12.—WILLIAME GARIOCHE, fone to James Garioche of Kinstair, and Thomas Anderfone in Awfurd.

Dilaitit for being in companie with *Alexander Forbes*, sumtyme of *Toweis*, vpone the xxj day of Januar, 1620 last, bodin³ with foure pistolettis and tua lang gwnes, fuordis, durkis, and vtheris wappones *invasiue*; and cuming airlie in the moirning, befor the brek of day, to the duelling-hous of George Garioche, in Tuliechetlie, fone-in-law to Johnne Bonar, in Tulliechetlie, quhair the faid Johnne was, in sober and quyet maner, for the tyme, lying in his bed; and be plane force and violence entering within the faid hous, pat violent handis in the perfone of Barbara Forbes, ane fervand thairof, drew hir to the ffyre, and in maist barbarous and crewall maner held hir aboue the samyn, thraitning to cast hir thairin,

¹ Crag, or rock.

² Piteously; lamentably.

³ Furnished; provided.

and to burn hir quick,¹ gif scho reveillit nocht to thame quhair the said Johnne Bonar was : AND lykwayis, ffor the putting violent handis in the persone of Robert Broun, ane vther fervand of the said hous, and halding ane drawin durk to his breift, thraitning to strek him thairwith, gif he also reveillit nocht to thame quhair the said Johnne Bonar was for the tyme : AND last, vpone knowlege gevin to the said Alexander Forbes of Toweis and his complices, that the said Johnne Bonar was in his bed within the said hous, ffor thair cuming to him to his bedsyde, and drawing him furth of his bed in maist violent maner, taking him captiue and prissoner, and cayreing him furth of the said hous be the space of tua myles, to the watter of Lochell, and douking² him dyuerse tymes thairin ; and thair compelling him to yeild to the furneiffing to the said Alexander Forbes, and delyuering to him of ffyve hundreth merkis money ; and becaus of the said Johnne Bonar his refuifall of performeing thaireftir of his promeis, ffor cayreing him with thame, as ane captiue and prissoner, to the duelling-hous of Robert Merfar of Edindowie, and keiping him thairin, as ane captiue and prissoner, be the space of tua dayis and tua nichtis togidder : AND for beiring and weiring of hagbuttis and pistolettis, contrair the tennour of the Actis of Parliament.

Compeirit personallie the said Williame Garioche and Thomas Anderfones, and maist willinglie offerit thame selffis to the tryell of the law, disassenting *simpliciter* to all maner of continuation : And thairfoir protestit for thair cautioneris (Mr Williame Forbes of Craigievar, and Alexander Hill, litster,³ burges of Aberdene) releif.—Compeirit on the vther pairt, Johnne Forbes, elder of Brux, as procurator, speciallie constitute, for the said Johnne Bonar, persewar, and be vertew of ane Letter of procuratioun, subscryuit with his hand, of the dait the aucht day of July instant ; bearing, that the said Johnne, in regaird of his grit age and inhabilitie to travell to the keiping of this dyett, and that he vnderstuid the saidis Williame and Thomas, quha had fund cautione, war innocent of the haill crymes aboue writtin, Ordanit the said Johnne Forbes of Brux to pas *simpliciter* fra thair persute, &c. Quhilk protestatioun the Justice admittit.

House-breaking—Stouthreif—Theft.

Jul. 21.—PATRIK GRANT of Davachmoir ; Duncane Grant, in Wester Bunlody ; James M^callaster Vic Eane Oig, in Inchebroun ; Ewin M^cneill V^cquyane, in Littill Clwne.

Dilaitit for breking of Johnne Grant of Glenmorieftoun his hous of Belmacaene, in Vrquhart ; breking vp of fourtene lokit kiftis⁴ being thairin ; steilling and away-taking of certane guidis and geir being within the saidis kiftis, all pertening to the said Johnne Grant ; committit in Apryle, 1615 yeiris.

¹ Alive.

² Ducking.

³ Dyer.

⁴ Locked chests.

PERSEWAR, Johnne Grant of Glenmoriestoun.

The persewar passis *simpliciter* fra the perfute of the said Ewin ; and declairis him to be innocent thair of.

Continued to the thrid day of the nixt Justice-air of the scheref dome quhair thay duell, or soner, vpon xv dayis wairning. Johnne Grant, appeirand of Ballindalloche, become fouertie, &c.

Taking captive—Oppression—Starving to death.

Jul. 26.—ROBERT M^cCOULE, in Wester Kindrogine ; Robert Glas, thair ; and Johnne Bowy M^ckerra Dowy, in Straloch.

Dilaitit for Usurpatioun of our souerane lordis authoritie, in taking of vmq^{le} Allaister M^cgilliemule, in Innerridrie, ane simple pur man, furth of the duelling hous of Johnne Roy M^cgilliemule, vpon the landis of Bordland, within the scheref dome of Perth, binding him hand and fute, and cayreing him, as ane captiue and prissoner, with thame to the Castell of Blair, in Athole, and stryppit him naikit of his claithes, and thaireftir casting him in the pit of the said Castell, quhair, in the deid tyme of winter, viz. in December last, he fameischet with hunger and cald, eftir he had remanit foure dayis and foure nichtis thairintill : And thaireftir cayreing him out of the said pitt to ane gibbet (being deid) vpon the landis of Blair, quhair thay hang him vp as ane malefactour, but power or commissioun gevin to thame, or ony preceiding tryell tane of his guiltines of ony cryme.

THE Justice ordanit Johnne Fergusone of Belnacult, in Straloch, as cautioner and fouertie, to be vnlawit for nocht entrie of ilk ane of the saidis personis, in the pane of ane hundreth merkis : And siclyk, that thay fall be denunciēt rebellis and put to the horne, and all thair moveabill guidis to be escheit, &c.

Hurting and Wounding—Demembration.

Nov. 3.—JOHNNE STEWART of Hulreid ; James Blaikwoid, his servand ; and Johnne Pollok, sone to Johnne Pollok, in Caldcoittis.

Dilaitit of airt and pairt of the crewall Hurting and Wounding of Johnne Allansone, sone to Andro Allansone, in Waterfute, in his heid, be geving to him of seven bludie woundis thairintill, tua crewall woundis in his schoulderis and airmes : As also, of dismembring him of his thombe and thre fingeris of his left hand ; committit vpon the landis of Gorballis, pertening to Sir George Elphinstoun of Blytheswoid, kny^t, in his cuming frome Glasgou to his fatheris hous, in Watterfute, in the moneth of Junij last ; vpon set purpois, prouisioun, and ffoir-thocht ffellonie.

PERSEWAR, Johnne Allansone.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr James Hammiltoun.

It is allegit be Mr Thomas Hoip, as prelocutour for Johnne Stewart of Huldreid, that the Dittay can nocht be put to ane Assyse aganis the said Johnne, nor his men, becaus per Legem, *si quis in rixa*, &c.; quhair ane persone, callit for ane cryme and is fugitiue thairfoir, the remanent persones, his allegit complices, enterand, can nocht be tryit be ane Assyse, or persewit for the samyn: As also, he takis instrumentis of that poynt of the Dittay, beirand the fact lybellit to be committit vpone foirthocht felonie. It is forder allegit be Mr Thomas, that the Dittay is nawayis relevant to pas to ane Assyse, for Dismembring, seing the persewar wantis nocht ane member, bot onlie his thombe and tua fingeris, *quia digitus non est membrum, sed tantum pars membri*.

Mr James Hammiltoun, as prelocutour for Johnne Pollok, takis instrumentis, that the persewar is willing to pas fra the said Johnne Pollokis persute *simpliciter*, as altogidder innocent of the cryme lybellit; and protestis, in caice he persew nocht Pollok, that the persewaris cautioneris be vnlawit: And thairfoir, in respect of Pollokis innocencie, he offeris him to the tryell of ane Assyse. Takis instrumentis also of the persewaris declaratioun, beirand that he nevir saw the said Johnne Stewart and remanent persones on pannell befoir his cuming to the grund of Gorballis, that day of his hurting thairupoun; as also, that Johnne Stewart said thease wordis at that tyme, 'It is ane mervellous matter we can nocht get James Pollok and Johnne Allansone red!'

THE Justice repellis the allegiances aboue writtin, concerning the Law allegit be Mr Thomas Hoip, and concerning the dismembring, in respect of the Dittay: And Ordanis the samyn to be put to ane Assyse.

VERDICT. The Assyse, all in ane voce, fand the saidis Johnne Stewart, James Blaikwood, and Johnne Pollok to be Cleane, innocent, and acquit, &c.

Slaughter.

Nov. 17.—JAMES MURE, in Dalmahoy,¹ and Thomas Aikman, thair.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Weir, in Dalmahoy; committit with stanes, rungis,² and vtheris wappones *invasuë*, vpone the last day of September lastbypast, vpone set purpois, prouisioun, and foirthocht felony.

PERSEWARIS, Margaret Wynrahame, the relict; Thomas and William Weir, brether.

PRELOCUTOUR in defence (for Thomas Aikman), Mr Robert Lermouthe.

VERDICT. The Assyse, all in ane voce, fand the said *Thomas Aikman* to be Cleane, innocent, and acquit: And siclyk, that the said *James Mure* is Giltie, culpable, and convict of the said slauchter.—SENTENCE *against Mure*. To be tane to the Mercat croce of Edinburghe, and thair his heid to be strukin frome his body; and all his moveable guidis to be escheit, &c.

¹ See Jun. 14, 1620.

² Cudgels; staves.

Slaughter.

Dec. 1.—JOHNNE BROUN, tailzeour, hantand¹ in Craufurdmure.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} James Williamfone, in Glengeich; committit the xxvj day of November lastbypast, within the duelling hous of Johnne Gibfone, elder, in Craufurdtoun, be hurting him with ane fuord in the heid, airmes, and vtheris pairtis of his body; quhairof, vpone the morne thaireftir, being the xxvij day of November, at tuelf houris in the day, he deceiffit.

PERSEWARIS, Symone Williamfone, burges of Edinburghe, and Robert Williamfone, brethir to the defunct; James Williamfone, brother-in-law; Sir Williame Oliphant, kny^t.

ASSISA.

Mathow Bailzie, of Littillgill,
Mr James Bailzie, fone to Mathow,
Johnne Makmath of Corfbank,

Thomas Johnnstoun of Beirholme,
Williame Tailzefer of Herklaw,
Johnne Vmphray in Glenmuklek.²

The said Robert Williamfone, brother to the defunct, fuoir the Dittay to be of verritie: Quhairvpoun my lord Aduocat askit instrumentis; and protestit for Wilfull Errour aganis the Assyse, gif thay acquit.

VERDICT. The Assyse, all in ane voce, be the declaratioun of the said Mathow Bailzie, chancellor, fand the said Johnne Broun to be ffylet, culpable, and convict of airt and pairt of the said crewall Slauchter.—SENTENCE. To be tane to the Mercat-croce of Edinburghe, and thair his heid to be strukin frome his body; and all his moveabill guidis to be escheit, &c.

Slaughter.

Dec. 15.—SIR JAMES MAXWALL of Calderwoid, kny^t; Alexander Lyndsay of Dunrod; Johnne Lyndsay, his brother naturall; and James Maxwell, fone to Williame Maxwell of Newlandis.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Alexander Lekkie of that Ilk; committit in September 1601 yeiris.

PERSEWARIS, Alexander Lekkie of that Ilk, as fone; Adame Cuninghame of Markinsche, the spous of Euphame Maxwell, relict of the said vmq^{le} Alexander, for his intreis; Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord.

PRELOCUTOR in defence, Mr Thomas Hoip, Aduocat.

The Justice, conforme to ane Warrant of the Secreit Counfall, direct to him, quhairof the tennour followis:

JUSTICE, Justice Clerk, and 3our deputis. Quhairas the fyftene day of December instant is appointit to Sir James Maxwell of Calderwoid, kyn^t, W^m Maxwell of Newlandis, James, Jⁿ, and James Maxwellis his fones, Alex^r Lyndsay of Dunrod, and James Wauchope in pe Airdis, ffor pair compeirance befor 3ow, to vnderly the lawis for the Slauchter of vmq^{le} Alex^r Lekkie of pat Ilk: Nochtwithstanding, for certane cauffis moveing ws, it is our will, and we Command 3ow to continew pe said dyet, vntill the

¹ Dwelling, but having no fixed residence.

² The rest of no note.

fextene day of Januar, in the 3^eir of God I^m.Vj^c. tuentie tua 3^eiris: And that 3e tak new caution of thame, conforme to the ordour. Quhairanent thir presentis fall be 3our Warrant. AT EDⁿ, the tuelf day of December, 1620.

AL. CANCELL^s. MAR. MELROIS. NITHSDAILL. LAUDERDAILL. CARNEGIE.

Continewis this dyet to the said xvj day of Januar, in anno foirsaid.—Sir Alexander Hammiltoun of Innerweik, kny^t, elder, and Alexander Levingstoun of Belstane, become pleges and fouerteis for the entrie of the saidis Sir James, &c.

(Jan. 16, 1622.)—SIR James Maxwell compeirit, and personallie producet ane WARRANT of the Lordis of Secreit Counfall, proceeding vpone ane Supplication gevin in by thair Lordschippis; quhair of the tennour followis.

MY LORDIS OF SECREIT COUNSALL, vnto 3our L. humlie meanis¹ and schawis, we 3our seruitouris, *Sir James Maxwell of Calderwoid*,² sone to v^mq^{le} *William Maxwell of Newlandis*, *Alex^r Lyndsay of Dunrode*, and *Joⁿ Lyndsay*, his brother naturale, That quhair, the sextene day of Januare nixtocum is appointit to us for our compeirance befor his Maiesteis Justice, to vnderly the Law for the Slauchter of v^mq^{le} *Alex^r Lekie of that Ilk*, at the quhilk day the Justice intendis to proceed in this matter; albeit it be of verritie, that be pe mediatioun and travellis of some weill affectit Noblemen, Barrones, and Gentilmen, commoun and indifferent³ freindis to both us pairteis, who hes delt and travellit betuix us, for bringing of this unhappie ffeid, whilk hes bene of so long continuance betuix our Houffis, to some termes of aggrement and reconciliatioun: Thay brocht pe matter to this poynt, that I, pe said *Sir James*, fall superceid and continew the prosecution and following out of pe action of Reducioun, quhilk I haif presentlie in dependance befor pe Lordis of Counfall and Sessioun, aganis pe said *Laird of Lekkie*, and that I fall suffer the same to rest and sleip⁴ till pe said sextene day of Januar nixtocum; and that the Criminall dyet foirsaid, appointit for our Tryell befor pe Justice, fall be continewit till Witsonday nixt; to the effect, that in this meane tyme, forder travellis may be tane for bringing of the ffeid and querrell betuix us to ane more happie and finall conclusioun: AND with this appointment of freindis, bothe we pairteis reffit weale satisfeit and content. THAIRFOIR we beseik 3our Lo. to geve command to pe Justice, Justice clerk, and pair deputies, to continew pe dyet foirsaid, appointit for our compeirance befor thame, to vnderly the Law for pe Slauchter, vnto pe said terme of Witsonday nixtocum; and that pai dispense with our personall compeirance, and tak new caution for us, conforme to pe ordour: And to discharge thame of all proceeding aganis us in the mean tyme, and of thair offices in that part, quhill pe said terme of Witsonday: Whairanent thir presentis fall be pair Warrant. And 3our Lordschippis ansuer. [*Followis the Lordis deliyuerance.*] APUD EDⁿ, quarto Decembris, 1621, fiat ut petitur, to the xix day of Junij nixtocum: Becaus the *Erle of Mar*, being personallie present, testifeit pe consent and appointment within writtin.

AL. CANCELL^s.

For obedience of the quhilk Warrant, the Justice continewis this dyet in the same forme, force, and effect, with all tryell of the pannell for the Slauchter aboue writtin, to the said xix day of Junij, &c.—Sir George Elphingstoun of Blythefwoid, kny^t, became fouertie for the entrie of the said Laird of Calderwoid, &c.

(Jun. 19, 1622.)—THE Laird of Calderwoid producet his Maiesteis Letter following:

¹ Complains.

² It is likely the following words are omitted in the record, through a clerical error: 'Kny^t, James Maxwell,' sone, &c.

³ Disinterested.

⁴ When no proceeding takes

place in suits before the Court of Session for *year and day*, the process is technically said to *fall asleep*, and is revived by a Summons of *Wakening*, &c.

JAMES R.

TRUSTIE and weilbelouit, We greit 3ow weill. WHAIR AS, We be crediblie informet that *Sir James Maxwell of Calderwood, kny^t*, and *Alexander Lindsay of Dunrod*, with thear complices, ar summond, to vnderly our Lawis, for þe Slauchter of vmq^{le} *Alexander Lecky of that Ilk*, alleadged committed be thame, We ar well pleased to grant vnto the said *Sir James* a Respitt for the same, during the space of certane monethis estir the dait heirof: AND thairfoir haif thought goode, by these presentis, to will and requyre 3ow not to medle in any wyse, nor to tak cognitioun of the said cause, till the fyft day of October nixt. Wherein We expect 3owr conformitie to our pleasour. GEVIN at our Court of Grenewiche, the first of Junij, 1622.

THE Justice continewis, &c. *Sir Johnne Hammiltoun of Lettrik*, and *James Maxwell of Kirkconnell*, cautioneris, &c.

PRELOCUTOURIS in defence, *Joseph Myller*, Aduocat; *Archibald Hammiltoun*, Commissar of Lanark.

(Oct. 5, 1622.)—JOSEPH MYLLER producet tua feuerall Testimoniallis, the ane subscryuit be the Minister of Lanark, and dyuerse elderis of the Seffioun of that Kirk; and the vther subscryvet be the Minister of Carlouk, and certane of the elderis of that Kirk, testifeing the deceife of *Sir James Maxwell of Calderwood, kny^t*: And vpone the production thairof askit instrumentis.

The Laird of Dunrod presentit to the Justice ane LETTER of HIS MAIESTEIS, quhairof the tennour followis.

To o^r trustie and weilbelouit, o^r Justice, Justice clerk, and pair deputeis whatfoeur.

JAMES R.

Trustie and wellbelouit, We greete 3ow well. Whairas, We haue bene pleased to write to o^r Counsell, willing thame to employ their best meanes, for reconciliatioun of *Sir James Maxwell of Calderwood* and *Alexander Lekkie of that Ilk*: We haif lykwayis thocht by these presentis to will and requyre 3ow nocht to proceed in the criminall actioun intendit aganis the said *Sir James Maxwell* and his complices, for the Slauchter of vmq^{le} *Alexander Lekkie of that Ilk*, till 3e fall vnderstand by o^r said Counsell that pai haif gevin vp all forder deilling in that matter. So, exspecting 3o^r conformitie to this o^r ples^r, we bid 3ou fare weill. GEVIN at Windesore, the seavinthe day of August, 1622.

Conforme to the quhilk directioun of his Maiestie, the Justice deferris all proceeding aganis the pannell.

The said *Johnne Lyndsay* disaffentis to the said continuatioun, and affirmes him self to be innocent of the said Slauchter; and thairfoir offeris him self presentlie to the tryell of the Law for the samyn.—The Justice Ordanis him, with the remanent defenderis vpone pannell, to find cautioun. *James Lyndsay of Scheillis*, and *Alexander Levingstoun of Belstane*, become cautioneris, &c.

[*Mr Robert Fairlie, Justice-Depute.*]

Taking captive King's free lieges—Cruel oppression—Murder, &c.

Feb. 7, 1621.—JAMES PARK in Cathkyn, and George Park in Wester Gremlear, his brother.

Dilaitit of airt and pairt of the Taking of vmq^{le} *William Knox*, in Cathkyn, furth of his duelling hous, vnder filence of nycht, and with cudgellis and rungis besting and dinging him in the breist, fydis, bak, and bellie; thairby breking

and bruseing his haill intrallis and nobill pairtis within him, setting thair feit betuix his leggis vpon his ball-cod,¹ and forceing thairby his stanes to loup vp in his liskis;² binding him thairefter with ane coird, or hair-tedder, to ane horse and ane sled,³ and cayreing him with thame as ane captiue and prissoner to the toun of Hammiltoun: Off the quhilkis hurttis and dedlie woundis, he deceiffit, in the moneth of Januar; the samyn being done to him in the moneth of October of befor, in the yeir of God I^m.V^c.lxxxxvj yeiris.

PERSEWARIS, Johnne Knox, as sone; Sir Williame Oliphant, kny^t.

PRELOCUTORIS in defence, Mr Tho^s Hoip, Mr Ja^s Hammiltoun, Mr Lueis Stewart, (Advocates.)

It is allegit be the pannell, that the Dittay contenis tua feuerall crymes; the first, for taking and apprehending of his Maiesteis frie lege but⁴ Commiffioun, quhilk is tressonable; the vther cryme, for Murthour and Slauchter of him, in in maner lybellit. As to the first cryme, quhilk inferris the cryme of Tressone, *non relevat*, becaus, taking without imprissoning *in privato carcere*, and detening him thairin, *per spacium viginti quatuor horarum*, can nocht, be⁵ the law, infer *penam privati carceris*. And as to the Murthour lybellit, *non relevat* to pas to ane Assyse, except it war condiscendit, at quhat tyme he contractit the deidlie feiknes, eftir the geving of the straikis quhairupoun daith followit, as is alleggit in the lybell. My lord Aduocat conioynes the tua crymes lybellit, and concludes thairin only *penam capitis* to be inflictit vpon the committeris; and thairfoir defyres the Justice to put the haill lybell *coniunctim* to the knowlege of ane Assyse.—The persewar, Johnne Knox, declairis that he will nocht persew at this tyme, becaus the speciall persones that ar fummoned, and best knawis the treuth of the pannellis giltines, ar nocht present: And thairfoir, defyres that the matter may continew to ane fyftene dayis wairning, and the pannell put vnder new cautioun.—The pannell disassentis to the said continuatioun; and in respect, thair is ane sufficient number of Assyse present, all fummoned be the persewar, offeris thame selffis to the tryell of the law for the haill crymes lybellit; quhairof thay declair thame selffis to be altogidder innocent: And protestis, in respect of thair former offer, that thay be nawayis trubillit or persewit for the saidis allegit crymes, in ony tyme cuming.

THE Justice continewis this matter to ane fyftene dayis wairning; and ordanis the pannell to find cautioun, &c. Williame Anderfone, portioner of Littil Govane, became cautioner, &c.

[*Mr Alexander Coluile, Justice-Depute.*]

Usurping King's authority—Taking captive, &c.

Feb. 9.—RICHARD GRAHAME of Hospitalscheillis, and Robert Merfar, messinger in Abirdene.⁶

¹ Testes.

² Reins.

³ Sledge, or cart without wheels.

⁴ Without.

⁵ By.

⁶ Cautioners, 'George Erle of Marschell, and James Garioche of Kinfair.'

Dilaitit for cuming to Patrik Farquhar, burges of Abirdene, his duelling-hous thair, and maist violentlie, but ordour of Law,¹ or concurrence of the Magistratis of the said burgh, and without ony Commiffioun or vther Warrant, putting violent handis in the perfone of the said Patrik Farquhar, taking him furth of his said hous; and thairfra, cayreing him, as ane captiue and priffoner, to the said Richerd Grahames Hous of Overcraig: As also, for cayreing him to the priffone of Stanehyve, quhairin he was keipit be the space of tuentie dayis: LYK AS, he was keipit and detenit in the said Richerd Grahames Hous, *tanquam in privato carcere*, be the space of tuentie foure houris; vfurpeing thairby our fouerane lordis authoritie vpone thame: AND sic lyk, for transpouirting him to the duelling hous of Mr Williame Reid in Cowie, quhairin he was keipit in ftrait firmance the space of vther xxiiij houris: Vfurpeing thairby our fouerane lordis authoritie vpone thame.

PRELOCUTOURIS in defence, Mr James Oliphant, Mr Roger Mowat, Aduocattis.

The said Patrik Farquhar declairit, that the saidis Letteris war altogidder raifit but² his warrant, and by³ his knowlege; and without ony informatioun gevin be him to our fouerane lordis Aduocat, or to the said James Keyth,⁴ or ony vther thairintill: And thairfoir, he renuncet all actioun Criminal or Ciuile that he had or could allege aganis the said Richard and Robert, and past *simpliciter* fra thair perfute, as altogidder frie and innocent thairof.—My lord Aduocat declairis, that thair is collufioun and secreit aggrement betuix Patrik Farquhar and the perfones on pannell; and desyres the pannell thairfoir to be put vnder new cautioun, for thair compeirance of new agane, vpone xv dayis wairning, for his Maiesteis intereis allanerlie.—Johnne Grahame, indueller in Edinburgh, becomes cautioner to the above effect.

My lord Justice Ordanit na letteris to be direct furth aganis the pannell, at the instance of the said Patrik, for the crymes foirfaidis, in ony tyme cuming, in respect of his former declaratioun.

Slaughter.

Feb. 23.—JOHNNE BELLENDEN, indueller in Edinburghe.

Dilaitit of airt and pairt of the Slauchter of vmq¹⁰ James Dalmahoy, burges of Edinburgh.

PERSEWARIS.

Agnes and Helene Dalmahoy, sifteris; Sir Johnne Dalmahoy of that Ilk, kyn^t; Andro Ker of 3air.

PRELOCUTOURIS in defence, James Borthuik of Newbyres, Mr Laurence McGill.

THE JUSTICE, of consent of pairtie, continewis the dyet to the sevint of Marche

¹ Without legal warrant. ² Without. ³ Beside; past; without; contrary to. ⁴ Of Harviestoun, cautioner for producing the Letters duly executed against the pannell.

nixtocum. And ordanis the pannell to be tane bak to waird, thair to remane quhill the said day.

Mar. 7.—CONTINewis this matter to Fryday nixt, the nynt *instantis*.

Mar. 9.—THE perfewaris passis fra the perfute of the pannell, *pro loco et tempore*.

Slaughter.

Mar. 30.—MR JAMES BAILZIE, sone to Mathow Bailzie of Littilgill.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Dalmahoy, merchand burges of Edinburgh.

PRELOCUTOURIS in defence, Mathow Bailzie of Littilgill, Mr James Hammiltoun.

The saidis Mathow, and Mr James, declairit, that Mr James Bailzie, his sone, the tyme of the geving of the charge to him, for his compeirance, was and is as yit heviellie diseasit with seiknes, that he is nocht able to travell to the keiping of this dyet, &c.

Johnne Loverance, Minister at Robertoun being solemplie fuorne, declairit, that he is Minister at the Kirk of Robertoun, and within this thre dayis visseit Mr James Bailzie within the parochin, quhair he was lying bedfast, heavilie diseaset with seiknes, and nawayis of habilitie to travell, vpone horse or fute, to the keiping of this dyet; as he fould ansuer to the grit and Almychtie God.—*Johnne Dunfyre* in Robertoun, also fuorne, is conforme to the said Johnne Loverance, Minister.—*Mungo Inglis* thair, lykwayis deiplie fuorne, depones conforme to the Minister.

THE Justice ordanit caution of new agane to be ffund for the said Mr James Bailzie, that he fall compeir the thrid day of the nixt Justice-air of Lanerk, or soner, vpone xv dayis. The said Mathow becomes cautioner.

[*Mr Robert Fairlie, Justice-Depute.*]

Murder under trust, credit, and assurance.

Apr. 13.—GEORGE ERLE OF CAITHNESS, and James Sinclair in Diran.

Dilaitit of airt and pairt of the crewall and treffonabill Murthour and Slaughter vnder trust, credit, and assureance of vmq^{le} Thomas Lyndsay in Scraibster in Kaithnes; committit be thame and thair compliceis, in forme and maner specifeit in the Letteris.

Robert Monro of Aldie, Commiffar of Kaithnes, as brother on the mother syde, to the said vmq^{le} Thomas, produceit the Letteris deulie execute and indorfate vpone the said Erle and James Sinclair, be the quhilkis, thay and ather of thame ar denuncet rebellis and put to the horne, for nocht finding of caution, to haif compeirit befor the Justice or his deputis this day.

THE Justice, vpone the production of the saidis Letteris deulie execute,

indorfat, and regiftrat, adjudget the faid Erle and James Sinclair, in respect thair of, and of thair nocht compeirance perfonallie this day, to be ffugitiues fra his Maiefteis lawis for the faid treffonabill Murthour, as culpable and fugitiue thairfoir.

[*Mr Alexander Coluile, Justice-Depute.*]

'Forcing'—Rape.

Jun. 27.—JAMES M^cNACHT in Igifzaird, and Thomas Weir in Gairdingholme-fute.

Dilaitit of the fforceing of vmq^{le} Jonet M^crone, fervand for the tyme to Thomas Weir in Gairdingholme-fute, and abufeing hir, in the moneth of November, 1620 yeiris, in sic foirt, that within tuentie dayis thaireftir fcho deceiffit.

PERSEWAR, Williame Campbell, coufing-germane to the defunct.

PRELOCUTOURIS in defence, Mr Lueis Stewart, and Adame Cuninghame, (Advocates.)

The pannell defyres to vnderftand the perfewaris entreis to perfew; and that he declair how neir of kyn he is to Jonet M^crone.—The perfewar declairis he is coufing-germane to the faid vmq^{le} Jonet, viz. fcho was his father-fifter dochter; and thairfoir hes guid intreis to perfew.—It is allegit be the pannell, that he can nocht be eftimat ane lauchfull perfewar, becaus the perfewaris father was the defunctis bastard-brother; and fa, of the Law, can nocht perfew, his father being bastard; the verritie quhairof referris to the perfewaris ayth: Quha declairit the allegiance to be of verritie.

THE JUSTICE, in respect thair was na lauchfull perfewar to infist in this perfute, Ordanis the dyet to desert.

The pannell takis instrumentis thairupoun, and affirmes that thai ar altogidder innocent of the crymes lybellit; and gif ane lauchfull perfewar, ather for the parteis or the Kingis entreis, war present, thay wald maift willinglie offer thame felffis to the tryell of the law for the faidis crymes; and difaffentit, *simpliciter*, fra ony continuatioun, without ony exceptioun to be proponit aganis ony lauchfull perfewar or perfones of Affyse, being honeft and vnfulpect perfones; protesting, in the meane tyme, for thair cautioneris relief, fund for thair compeirance this day.

Slaughter.

Jul. 19.—HENRIE BAIRD, at the Mylne of Mukard.

Dilaitit of the crewall Slaughter of vmq^{le} Robert Huttone, duelland within the parochin of Mukard, befyde Castell Campbell, be casting of ane otter-ftalff, with ane tua-granet fork of irne at the end thair of, at the faid vmq^{le} Robert, quhilk peirfit him in the bellie, quhairof he immediatlie thaireftir deceiffit; committit vpone the nynt of July instant, vpone fet purpois, prouifioun, and ffoir-thocht ffellonie.

PERSEWAR, Johnne Huttone, at the Kirk of Mukard, as brother to the defunct.

The pannell confessis the fact, and craves God mercie.

VERDICT. The Assyse, all in ane voce, fand the said Henrie Baird, conforme to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of airt and pairt of the said Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin fra his body; and all his moveable guidis to be escheit, &c.

Convocation of Lieges—Wearing of Hagbuts—Slaughter, &c.

Jul. 20.—WILLIAME DOUGLAS of Drumlangrig; James Douglas of Mouffell, his brother; Johnne Douglas of Killievarrene, his brother naturall; Robert Greir, younger of Lag; and others.¹

Dilaitit for contravening his Maiesteis Actis of Parliament, in making of convocation of his hienes legis: AND beiring and weiring of hagbutis and pistolettis: AND for airt and pairt of the Slauchter of vmq^{le} Thomas Coupland in Caschogill: AND demembring of Robert Douglas, sone to Sir Robert Douglas of Caschogill, kny^t, of his left lug:² Committit in Maij lastwas, vpone the tuelf day thairof, at the Mofs of Caschogill.

PERSEWARIS, Margaret Corfbie, the relict; Williame, Robert, and Thomas Couplandis, as fones; and Coupland, as dochter to the said vmq^{le} Thomas; Sir Robert Douglas of Caschogill, kny^t, as father to Robert Douglas, and maister to vmq^{le} Thomas.

PRELOCUTOURIS, Mr Thomas Hoip; Mr Thomas Nicolfone, younger; and James Dowie, wryter.

Convocation of Lieges—Wearing of Hagbuts—Slaughter, &c.

Jul. 20.—SIR ROBERT DOUGLAS of Caschogill, kny^t; Robert Douglas, his sone; Johnne Paterfone, in Caschogill; Thomas Paterfone, thair; Williame Coupland, thair; Hob Coupland, thair; Mathow Cowane, thair; and twenty-seven others.

Dilaitit for contravening of the Actis of Parliament, in making of convocation of his Maiesteis legis; beiring and weiring of hagbutis and pistolettis; and invaiding of the Laird of Drumlangrig, his brother, and remanent persewaris, with schottis of hagbutis and pistolettis; committit at the Mofs of Knockconnie, pertening to David Douglas, heritour thairof, vpone the tuelf day of Maij last.

¹ The rest of the pannells were, 'Duncane Hunter of Ballagan; James Johnnstoun of Lochhous; James Johnnstoun, callit *Braikinsyde*, James Johnnstoun, callit *Croftheid*, James Douglas, and Robert Grahame, all four servandis to the said James of Lochehous; Archibald Douglas, servand to the Laird of Mouffell; Robert Creichtoun, sone to . . . Creichtoun of Craufurdoun; Thomas Bell, sone to *Reidcloke*; James Douglas, callit in *Glenmeid*; Christie Airmestrang in Bigholme, his sone in law; Andro Hunter in Auchinbaithe; James Douglas, Thomas Mairtene, Johnne Paterfone, callit *the fukler*, all servandis to the said Laird of Drumlangrig; Hob Hunter in Crarieknow; and Johnne Rig, messinger.' ² Ear.

PERSEWARIS, Williame Douglas of Drumlangrig; James Douglas of Mouffell, his brother; Johnne Douglas of Killievarrane; James Johnnstoun of Lochehous; Robert Dalzell, sone naturall to Sir Robert Dalzell of Eliok, kny^t; Sir Williame Oliphant of Newtoun, kny^t.

Ane WARRANT was producet to my lord Justice, quhairof the tennour followis.

JUSTICE, Justice Clerk, and your deputis; fforfamekill as the tuentie day of July instant is set and affixed for perfute of *Williame Douglas of Drumlangrig*, and certane his speciall freindis and kynsmen befoir 30w, for pe slauchter of vmq^{le} *Thomas Coupland*, with hagbuttis and pistolettis; as also, for perfute of *Sir Robert Douglas of Caschogill*, and certane his freindis and pairt-takeris, for making of convocatioun of his Maiesteis legis, and beiring, weiring, and schuiting of hagbutis and pistolettis, contrair his Maiesteis Actis of Parliament; as the Letteris, *hinc inde*, raifit be ather pairtie thairintill, beiris: AND becaus, be the mediatioun of freindis, the saidis actiones ar liklie to pak up and agrie, and that no forder truble be had amangis pame pairintill: It is pairfoir our will and plesour, that 3e continew the saidis dyettis to the thrid day of pe nixt Justice-air of the Scheref dome quhair pe saidis pairteis duellis, or soner, vpone fyftene dayis wairning; dispenfand with thair nocht compeirance befoir 30w this day, and takand new cautoun for pe haill perfonas re-entrie contenit in the Letteris, to that effect, vnder the panes contenit in the Actis of Parliament. Quhairanent thir presentis fall be to 30w ane sufficient Warrant. Subferyuit at Edinburgh, the xx day of July, 1621.

HAMMILTOUN. AL. CANCELL^s. MAR. MELROS.

THE Justice continewis the saidis tua dyettis to the thrid day of the nixt Justice-air of the Scheref dome of Dumfreis, quhairin the haill perfonas duellis, or soner, vpone fyftene dayis.

Compeirit personallie Douglas of Caveris, Scheriff of Teviedaill, and become fouertie for the said Williame Douglas of Drumlangrig: And siclyk, Johnne Wilfone of Croglene, James Menzies of Enoche, and Malcolm Dalrumpill of Enoche, fouerteis, conjunctlie and feuerallie, for Sir Robert Dalzell of Eliok, James Douglas of Mouffell, &c., that thay fall compeir, &c.—And on the vther pairt, compeirit Sir Williame Douglas, younger of Caschogill, kny^t, and become plege and fouertie for his father, and haill remanent defenderis, &c.

[*Mr Robert Fairlie, Justice-Depute.*]

Slaughter—Wearing of Hagbuts and Pistolets, &c.

Aug. 24.—CAPITANE JAMES JOHNNSTOUN of Thornik.

Dilaitit of the felloun and crewall Slauchter of vmq^{le} Williame Johnnstoun, brother germane to Robert Johnnstoun of Wamfray: And for contravening of the Actis of Parliament, in beiring, weiring, and schuiting of hagbutis and pistolettis, and slaying the said vmq^{le} Williame Johnnstoun thairwith; and remanent crymes contenit in the criminall Letteris.

THE Justice ordanit James Johnnstoun of Braikanfyde, cautioner for the said Capitane, to be vnlawit and amerciati, for nocht entrie of the said Capitane, in the pane of ffyve hundreth merkis: And siclyk, that the said Capitane James, for his nocht compeirance, fall be denunciit rebell, and put to the horne; and all his moveabill guidis to be escheit, &c.

[*Mr Alexander Coluile, Justice-Depute.*]

Slaughter in Single Combat, or Duel, while in Foreign Service.

[THE following Trial is one which possesses considerable interest and importance, as well from the light which it throws on the application of the LAWS OF DUELLING, in Scotland and in the Low Countries, as from the rank and situation of the parties implicated. *Captain Harry Bruce*, who had subsequently been employed to superintend the martial exercises of CHARLES, PRINCE OF WALES, afterwards the unfortunate KING CHARLES I, was rigorously pursued, by the vindictive and mercenary spirit of the relatives of *Captain John Hamilton*, in the Supreme Criminal Tribunal of Scotland, after he had long before been honourably acquitted by Court Martial in Flanders—under the impression, no doubt, that they would either extort a large sum of money from this new Court favourite, or procure his ruin or death. The DUEL or SINGLE COMBAT referred to in this case, and into which *Bruce* had been dragged by the rashness and insolence of his antagonist, had taken place no less than about *seventeen years* previous to those proceedings!

The reader may here be referred to the Case of “*Capitan Johnne Rig, Archeour of the Gaird of France*,” in a former part of this Collection, Vol. II., p. 382.]

Nov. 14.—CAPITANE HARIE BRUCE, feruitour to THE PRINCE his Hienes.

Dilaitit of airt and pairt of the Slaughter of vmq^{le} Capitane Johnne Hammiltoun; committit in ane Singular Combat, in the Law Countreyis of flanderis, in anno I^m.Vj^c. and fyve yeiris.

PERSEWARIS, Margaret Hammiltoun, as sifter; Sir Williame Oliphant of Newtoun, kny^t.

PRELOCUTOR in defence, Mr Robert Foullis.

The pannell producet ane WARRAND and command of the Lordis of Secreit Counfall, quhairof the tennour followis.

ACT OF THE LORDS OF PRIVY COUNCIL.

AT EDINBUR^t, the threttene day of November, the 3eir of God I^m. sex hundreth tuentie ane 3eiris. ANENT the Supplicatioun presentit to the Lordis of Secreit Counfall be *Capitane Harie Bruce*, feruitour to THE PRINCE HIS HIENES, makand mentioun, that quhair, the xiiij day of November instant is appointit vnto him, vpone the complent of *Margaret Hammiltoun*, as sifter, with the remanent kyn and freindis of vmq^{le} *Capitane Johnne Hammiltoun*, ffor his compeirance befor the Justice or his deputis, in the Tolbuthe of Ed^r, to vnderly the law for the Slauchter of pe said vmq^{le} *Capitane Johnne Hammiltoun*, committit be the said *Capitane Harie*, in ane Singular Combat, in the Law Countreyis of flanderis, some sevintene 3eiris ago; lyk as, the Justice intendis to proceed aganis him, in that matter, althocht it be of verritie, that gif respect be had to the nature and qualitie of the persute, and to the circumstances of the Slauchter, quhan, quhair, and vpone quhat occasioun it fell out, it will be fund that the tryell thairof can no way be proper nor competent befor the said Justice, nor in no vther Judicatorie within this Kingdome; becaus the said Slauchter was committit outwith his Maiesteis dominiones, within the territoireis of the *Estaitis of the Law Countreyis*, in ane Singular Combat, quhairvnto the said *Capitan Harie* was vrged and drawin by the grittest respectis of credeit and reputation quhairwith a Gentilman could be affailzeid: AND howeuir the said *Capitane Johnne Hamiltoun* and he be borne Scottisemen, and in that respect obleist in all submissiue deuteis of allegiance to thair naturall Soverane, zit the tyme of that vnhappy slauchter, and dyuerse 3eiris befor, thay war bothe in actuall seruice, and suorne *Officeris* to the saidis *Estaitis*, and alse far subiect to thame and to thair Judgement and Jurisdiction, in all matteris, alswell impoirting lyfe and death, as guidis and geir, as gif thay had

bene thair naturall-borne subiectis: And thair was no difference betuix thame and the natives of the cuntrie, in pointis of subiectioun to the saidis *Eftaitis* and pair lawis, the saidis *Eftaitis*, at that tyme, being pair fouerane Judges in all matteris, of quhatfumeuir qualitie, occurring within thair boundis. AND twitcheing the matter it selff, the treuth is, as was clerlie verifeit befor the *Counfall of Weiris*¹ establisched be the saidis *Eftaitis*, for trying and censuring of matteris of this kynd, that the said *Capitane Harie* was dyuerse tymes challenget to the Combat be the said vmq^{le} *Capitane Johnne Hammiltoun*, nochtwithstanding of the mony offeris maid be the said *Capitane Harie* to geve him all dew satisfioun and reffone, in the matter contravertit betuix thame, that, in respectiue termes of confideratioun, could be craved; bot the moir the said *Capitane Harie* eschewit his Challenge, he was so much the moir earnest in following of the same, obiecting vnto the said *Capitane Harie* the reproche of cowardice, and protesting to abuse him, in his private revenge, accoirdinglie: And so, the said *Capitane Harie*, finding him selff interest and tuiched in so heigh a poynt of credeit and reputatioun, quhilk being anes lost, was nevir to be recoverit, bot wald cary with him to the grave ane infamous imputatioun, and an ignominious spott of vnworthie cowardice; and haifing respect, pairwithall, to his birth and parentage, quhilk he was lothe to blemishe, in a matter of this kynd; and aboue all thingis, haveing euir befor his eis the equitie of his caus, with ane full and constant assureance, that God, who is pe trew sercheour of the heart, and vpon quhois devyne Prouidence the event of such duellis dependis, wald iustifie his pairt, in that uniuersall Challenge quhilk was revertit vpon him, he acceptit and vndertuik the Challenge, quhairin it plesit God to iustifie and cleir the equitie of his caus, by making the said vmq^{le} *Capitane Johnne* to vnderly the dew desert of his errour and raschenes: Quhairvpon, the said *Capitane Harie*, being callit befor the said *Counfall of Weir*, and the forme and circumstances of pe samyn being narowlie examined and ryped vp be thame, the qualitie of the said *Capitane Harie* and pe said umq^{le} *Capitane Johnne*, thair persones being sworne and actuall Officeris in the airmie, making thame subiect vnto the said *Counfall of Weir*, and punisheable be the lawis of that *Eftait*; thay ffand, that pe said *Capitane Harie* had done nothing vnbesameing the deutie of a souldiour, suppoirtit with the testimonie of a good conscience: And pairfoir, restoirit him to his place and charge, quhairin he serued with good credeit dyuerse 3eiris paireftir. AND quhair as, he looked that this forme of tryell, vsed aganis him be the said *Counfall of Weir*, who wer only Judges to him in this caice, sould haif secure and warranted him frome ony new persute, zit the sifter and ffreindis² of the said vmq^{le} *Capitane Johnne* callit him, for pe same Slauchter, befor his Maiesteis Justice, in the fax hundreth and fyve 3eir of God;³ quhair of informatioun being send vnto him frome hence, he maid his address to HIS MAIESTIE, acquaintit his hienes with the perticuleris of this matter, and all that proceidit pairin; quho, eftir confideratioun pairof, nocht only vtterit his discontentment that ony such matteris sould haif bene walknit heir, bot HIS MAIESTIE was gracioullie plesit to grant vnto the said *Capitane Harie* his Remissione for that deid, and wrait a Letter vnto the Lordis of his Maiesteis *Previe Counfall* ffor discharginge the Justice to meddle in that matter: Quhilk Remissioun and Letter being delyuerit to the lait *Erle of Dumbar*, and presentit vnto the saidis Lordis, as some of thame rememberis; the sleuth and negligence of those who war trusted with the said *Capitane Harie* his effairis, sufferit his Letteris to perrishe; and the matter has euir restit and sleipit senfyne till now. AND quhairas this matter is alreddie tryed and censured by those whome it properlie concerned, humblie thairfoir desyreing the saidis Lordis that thay wald geve command to the Justice, Justice clerk, and thair deputtis to desert the said dyet, and to desist and ceis fra all proceiding thairintill; lykas, at mair lenth is contenit in the said Supplication. Quhilk being red, hard, and confiderit be the saidis Lordis, and thay being pairwith weill advyset, THE LORDIS OF SECREIT COUNSALL ffindis it verrie necessar and expedient, that pai vnderstand HIS MAIESTEIS Will and plesour in this matter, afoir thay gif ony finall sentence or

¹ Council of war; court-martial. ² Blood-relations. ³ Anno 1605; a mode of expression by no means infrequent in pleadings, &c., for the sake of brevity.

direction thairanent: And thairfoir the saidis Lordis Ordanis and commandis his Maiesteis Justice, Justice clerk, and thair deputis, to continew the said dyet to the tuentie nynt day of Marche nixtocum, and to desist and ceis fra all forder proceeding pairin, quhill the said day; takand new caution of this supplicant, for his compeirance to his tryell the said day, conforme to the ordour obseruet in suche caices; to the effect that in this meane tyme the saidis Lordis may haif convenient tyme and lasure to informe HIS MAIESTIE anent the estait of this matter; and to attend HIS MAIESTEIS gracious Will and pleasour pairanent. For quhilk purpois the saidis Lordis Ordanis ane Missiue Letter to be writtin to his Maiesteie.

EXTRACTUM de Libris Actorum secreti Consilij, s. d. n. Regis, per me Jacobum Prymrois, clericum ejusdem, sub meis signo et subscriptione manualibus. JACOBUS PRYMROIS.

Accoirding to the quhilk ACT, and for obedience of the ordinance mentionet thairintill, the Justice continewis this dyet, with all tryell to be tane for the said cryme, to the said tuentie nynt day of Marche nixtocum.—Mr James Bruce, indueller in Edinburghe, becomes cautioner for his entry, &c.

(Mar. 29, 1622.)—COMPEIRIT Mr James Bruce, indueller in Edinburghe, as he that was caution for the said *Capitane Harie* his entrie, and producet

ACT OF SECREIT COUNSALL.

APUD HALYRUIDHOUS, xxij die mensis Martij, anno dom. 1^m. Vj^c.xxij^o. THE Lordis of Secreit Counfall, accoirding to ane Warrant and direction in writ, signed be THE KINGIS MA^{TIE}, and this day presented vnto thame, Ordanis and Commandis the Justice, Justice clerk, and pair deputis to Desert pe dyet appointit to *Capitane Harie Bruce* for his compeirance befoir thame, to vnderly the law for pe Slauchter of vmq^{le} *Johnne Hammiltoun*, and to desist and ceise frome all proceeding aganis him at this dyet. Quhairanent the Extract of pir presentis fall be vnto thame a Warrant. EXTRACTUM, &c.

JACOBUS PRYMROIS.

Followis also the tennour of HIS MAIESTEIS Letter and direction to the Lordis of Secreit Counsell, anent the premisses.

JAMES R.

RICHT trustie and weilbelouit coungis and counsalouris, and richt trustie and belouit counsalouris, We greit 3ow weill. We war pleased to wryte to 3ow about tuelf 3eiris ago, concerning *Capitane Harie Bruce*, willing that no legall proceeding sould be permitted to be vsed aganis him for pe Slauchter of vmq^{le} *Joⁿ Hammiltoun*, in respect that pe samyn was committed out of oure dominiones; AND now, being crediblie informed, that of late some haif gone about to reveive pat persute, nochtwithstanding of our former commandement, We haif thocht guid, by theis presentis, to will and requyre 3ow to discharge or Justice generall, Justice clerk, and pair deputis, and all vperis or Judges and officeris quhatsumeuir, to grant ony Summondis or proces against pe said *Capitane Harie* for pe foirsaid Slauchter, or in ony wayis presume to medle or call him in questioun for pe samyn. And thus, most earnestlie recommending to 3or speciall cair, We bid 3ow fairweill. GEVIN at or manno^r of Theobaldis, the xiiij of Marche, 1622.

Accoirding to the quhilk Act of Counfall and ordinance thairin contenit, the Justice DESERTIT THE DYET aboue writtin.

APPENDIX TO THE TRIAL OF CAPTAIN HARIE BRUCE.

[SEVERAL Cases have already occurred in the course of this Collection, illustrative of the state of the Law and practice, in Scotland, as to DUELLING, interchanging of CARTELS, and Slaughters committed in SINGLE COMBAT. The preceding Trial is one of much interest; and the subject led the Editor to make some enquiries into various affairs of

honour, which had happened about the same period of this King's reign. Among others which have hitherto been noticed in this work, none appear to have excited greater interest than the quarrel between the sons of LORD CRANSTOUN and of SIR GEDEON MURRAY, which had nearly terminated in the most fatal manner. Although unconnected with the Case of *Captain Harie Bruce*, the following documents throw much light upon the opinions and practices of the Nobility and gentry in feuds and affairs of honour. It has been thought proper to preserve them in this place, as a memorial of transactions which tend to give a complexion and character to the spirit and genius of those times.]

I. LETTER from the Privy Council of Scotland to King James VI., relative to the CHALLENGE, &c. between the sons of LORD CRANSTOUN and of SIR GEDEON MURRAY.¹

PLEAS YOUR MOST EXCELLENT AND SACRED MATIE,

AS WE hope that your highnes hathe long since vnderstood of sum CHALLENGE OF COMBAT betuix the secound sone of THE LORD CRANSTOUN and SIR GEDEON MURRAY his sone, begun betuix the yowthes, vpon licht cawffis of verie small moment; and of the ordour taken be ws for preventing thame meiting, and calling of thame to there ansuer; and of the cowlse taken for there reconciliatioun, whiche wes done in prefens of the hole COUNSALL, wheirby all probabilitie of forder Challenging betuix the pairteis then, in appeirans, wes removed; so when, vpon privie informatioun maid to ws, sum fear was apprehendit of a new breache betuix the pairteis, by interchangeing of CARTELLIS privilye betuix thame selfis, whowever we wald have bene forye that the folyeis of the childrene, or the hard event which follow fuche accidentis, fuld have empaired or diminifched the love and affectioun which heirtofor haith bene and doeth still continew betuix there parentis, (bothe of quhome haith the worthelie deserved, and have behaved thame selfis most dewtifullye and faythfullye as thay have bene employed in your Maties servis,) yit heirin we war so muche more justlie moved to advertē to fuche a noveltye, that efter a reconciliatioun once maid befor your Maties COUNSELL, ather the keiping of your highnes peace fuld be so lytle regairdit, or the ordour takin by ws for the observeing therof so far contemned, as that any durst presume or attempt any new querrelling. Wheirvpon both the fatheris wer chaired to compeir, and bring with thame and exhibite there sones; whiche being accoirdinglie and dewtifullye obeyit by bothe of thame, efter a verye hard and exact tryall² takin, in regaird of the vnwillingnes of aither³ of the yowthes, vpon thair first questioneing, to confesse what new maiter haid passed betuix thame; at last, it being found that THE LORD CRANSTOUNIS sone wes the Challenger, by a CARTELL, wrettin efter the reconciliatioun maid; we therwpon committed him cloise prifoner in *the Castle of Blaknes*. The other, whowever, being provoked, yit, in regaird he did obscuire and conceale it, (being some presumptioun that he intendit to keip the meiting, and so to mak a breache of your Maties peace,) wes adiudget to be committed in *Edr Castell*, in frie wairde, haveing haid fredome granted vnto him furth thairof within xlvijj houris, and confyned within this Burghe and a myle abowt the same; where as, the said *Lord Cranstounis sone*, thir fourtene dayes past, haveing lyin cloise prifoner in *Blaknes*, and in the mean whyle making suite often by Bill⁴ to be releived, confessing, in most humble maner, his offence, and offering all satisfiatioun that fuld be injoynd be ws, wes, by directioun, brocht from the place of his imprifonment by the *Lievtennent of your MATIES GAIRD*, and presented befor ws; where, in the presence of *Sir Gedeon Murray* and his sone, he did humblye, vpon his knies, craive pardoun of your MATIE for the offence done, and did intreat ws to be fuitters for the same to your sacred highnes, on his behalf; haveing heirwithe confessed, also, the great wrong he haid done vnto your Maties COUNSELL, in preswming to renew ony Challenge efter reconciliatiounes maid; and theirwith vttering most apparent signes of inward sorrow for offending of his so loveing father, vnto whome he knew this his bypast behaviour wes so distaistefull, as without ony intercessioun he culd expect at his handes no favour. He then to the pairtie challanged, in pre-

¹ *Denmylne MSS.*, Advocates' Library, A. 2, 40. or 'Supplication' to the Lords of Privy Council.

² Enquiry; examination.

³ Both.

⁴ A Bill,

fence of bothe fathers, did there confes the wrong he haid done him, offering him what satisfioun he wald demand; and did there protest, that howevir, in his yowthfull folye, he haid ascryved the last reconcilioun as a maiter extorted by constraint or command of THE COUNSELL, that yit nottheles this his present aggriement wes of meire affectioun, whiche he intendit all bypast eylist¹ abolished to continew heirefter.

There wes sum jealowsye in this mater takin by SIR GEDEON, as that the LORD CRANSTOUN, whowevir not a direct vrger of his sone to this *Challenge*, haid nottheles intendit to tak some advantage, to the preiudice of the credite and honour of him and his sone; and by the speiches delyvered by SIR GEDEON in our preiudice, we did conceive no less: Bot yit, that this impressioun, not being cleirit, might tak no deiper roote, we then did questioun THE LORD CRANSTOUN theirow; who, in presence of SIR GEDEON, by his great oathe, vnrequyred, did protest that he wes so far from countenaunceing or allowing of his sones actioun and cariage in this busynes, as on the contrarye, these sevin yeiris past, no incident whatsoever that haid interveyned haid so muche greivit him; and that he did assure him self that SIR GEDEON wes no les in conscience perswadit, since he haid foirwarned him, immediatlie vpon his knowledge of the first *Challenge*; and vpon his sones depairtour the last tyme frome him, suspecting the humour of the yowthe, and yit, vpon his conscience, nocht knowing of any thing intendit, did of new certifie SIR GEDEON of his fearis. Whiche declaratioun, being delivered with so great attestations by one not muche accustomed to sweiring, did not onely remove all scrupule and jealowsye frome SIR GEDEON, as he then affirmed, but left none of the beholderis vnsatisfyed, and fullie perswadit of that Noble-mannis innocencie. THE COUNSELL, haveing taken ane verie strict and exact tryall of all circumstanceis whiche might inferre any the least suspitioun of THE LORD CRANSTOUNIS allowance, airte, pairte, or connivence at his sonis actioun, in the examining wherof, the farder that we did drywe we still fand the father the more cleare of all imputatioun; and, in our judgement, SIR GEDEON is fullye perswadit theirow; lykas, in our presence he did profess no less. And howevir, that heirvpon all pairteis, bothe eldar and younger, wer reconceiled, yit, becaws of the offence done to your MATIE by JAMES CRANSTOUN, in pressing to renew any querrell, efter aggriement ones maid in presence of COUNSELL, we have theirowpoun adiudget the said *James Cranstoun*, that betuix and the first of October nixt, he fall depairt your MATIES dominiones, and remaine furthe of the fame, and naway returne bak, vntill that your MATIES speciall Licence and Warrant be purchest; and have takin sovertye and cawtioun, bound vnder a great sowme, for that effect. AND becaws there wilbe a necessitie of provisioun to be maid by the father for the sones furneising, in his going beyond See, theirowe we have committed him prifoner in his father's owin keiping, vntill the tyme of his depairture; who is to restraine, endureing that space, his sone of all fuche libertye, wheirbye any furder harme might be feared.

AND albeit the reconcilioun and aggriement wes fullye maid, so as in our judgementis there did not remayne the least scruple of any furder grudge amonges the pairteis, yit the noveltye of the caice, and the hairme whiche the impunitye thairow might produce, if vpon this example, others who haif bene formerlye reconceilit, wald now preise to renew and revieue there olde querrellis, we culd nocht, in our dewtye to your MATIE, suffer this to go vnpunished; whiche moved vs, (however earneastlie and humblye entreated by SIR GEDEON MURRAY to recall our Sentence and determinatioun aganis the said *James Craunstoun*,) nottheles, for ane exemplarye punischment, and efferyng² of others to commit³ the lyk insolence, to continew our resolutioun takin in the maiter for his BANISCHEING, as said is. As lykwayis, ather of the two fathers bund and obleist, not onely for these there sones, betuix whome this CHALLENGE hes past, bot for all others of there sones come to mannis aige, everie ane of thame vnder the payne of Ten Thowfand merkis, that thay fall keip your MATIES peace, that no CARTELLIS falbe sent by the one to the other; and that the pairtye vnto whome any falbe sent, fall

¹ Offence; from *oculus* and *ledere*. Danish, *overlast*, molestia, incommodum.

² Affraying; terrifying. Fr.

effrayant.

³ A strange form of speech, then in use, to express 'from committing.'

immediatlie, with all possible diligence, acquaint the Counsell with the CHALLENGE sent to him ; otherwayes the payne foirfaid to be incurrit. And hoipeing that nothing heirin is left vndone, whiche in sic a caice wes requisite, and fullye expecting your MA^{TIES} good allowance and favorable construc-tioun of our proceidingis, wischeing thay may prove good mettall when thay come to the tryall of the trew tuitchestone, vnto whome we do most humblye pray for the continuance of all happines, We doe rest

Your sacred Maiesteis most humble and obedyant subiectis and seruitouris,

AL. CANCELL^s. DUMBAR. WIGTOUN. KILSAYTH. J. PRESTOUN. ALEX^r HAY. S. T. HAMILTON.
EDINBURGH, the tent of August, 1610.

To THE KING, his most sacred and axcellent MAIESTIE, &c.

II. LETTER, *the Privy Council to the King*.¹

MOST GRATIOUS AND SACRED SOUERANE,

We ressaunt your MAIESTEIS Letter, twitcheing your MA^{teis} cenfure² of that lait committit ryott be THE ERL OF LOTHEANE, and anent the fyne whilk your MAIESTIE wold haif to be imposed vpon him for that caus ; whairin, as your MAIESTEIS most excellent and rair wifdome in the cenfure-ing of that mater so iuditiousslie, by the circomestanceis sett down in your MAIESTEIS Lettre, and the direction gevin be your MAIESTIE anent the pvnishching thairof, is verye weeie warrandit with infalli-ble groundis of iustice and reasoun ; yitt, becaus suche heich fynes in ryottis of this qualitee hathe not bene vsuall to be imposed vpoun ony personis heir, we wilbe bauld to intreate your MAIESTEIS fauour, for a mitigationoun of the fyne to Thrie Thoufand merkis, whiche in all oure opinionis is anfuera-ble³ to the qualitee of the offence committed. He is full prisonner, and fall so continew whill the pairtye in some meafour ressaue satisfioun. And howeuer this ouersight, by⁴ all oure expectationis, hes fallen oute in his persone, we hoip that this your MAIESTEIS cenfure of him, will mak him moir consideratlie and respectiuelie to looke to his future cariage and behaviour.

AND whereas your MAIESTIE doeth mervell that no tryale hes bene tane be ws of the insolencie committit be THE LORD OF CRANSTONIS sones aganis THE ERLE OF LOTHEANE, it will pleis your MAIESTIE we did nevir heir of ony complaint in that mater, the pairtye being silent, and no informa-tioun gevin be him thairin : Alwayes,⁵ we haif causit demand of him, yf he will persew ? He hes promiseit to gif informatioun to your MAIESTEIS Aduocat, and to furneis probatioun ; whairin we shall tak suche exact tryall, and accordinglie inflict such pvnishment as the course of iustice, in suche a caise, requireth. And so, praying God to blisse your Maieftie with all contentment and happynes, we rest for ever,

Your Maiesteis most humble and obedyent subiectis and seruitouris,

AL. CANCELL^s. ARGYLE. MONTROSE. GLENCAIRNE. BALFOUR. GLASGOW.

EDINBURGH, xv May, 1611.

To THE KING, his most sacred and excellent MAIESTIE.

‘ Forceing ’—‘ Defloiring ’—Rape.

Dec. 5.—ANDRO WISCHERT of Mwretoun.

Dilaitit of the schamefull fforceing and defloiring of Bessie Leslie, dochter naturall to George Leslie of Auld Craig, aganis hir will, scho being ane young virgane nocht past ellevin yeiris of age ; committit in maner and at the tyme specifeit in the Letteris.

PERSEWARIS, Bessie Leslie, George Leslie of Auld Craig.

PRELOCUTOURIS in defence, Mr Laurence McGill, Mr Roger Mowat.

¹ Denmylne MSS. Adv. Library.
to ; against.

² Judgment.

³ Nevertheless ; at all events.

⁴ Commensurate ; corresponding to.

⁵ Contrary

The pannell offeris him selff to the tryell of the Law for the cryme contenit in the Letteris; quhairof, as he allegit, he is innocent; and difassentis fra all maner of continuatioun: And protestis, in respect of his compeirance this day and place, to vnderly the law, and that thair is nocht ane sufficient number of Assyse present, that na Letteris be direct aganis him in tyme cuming; speciallie, in respect this persute is maliciousslie intendit aganis him, being ane man of thre scoir ten yeiris of age, at the instance of the said George Leslie of Auld Craig, quha compeiris nocht this day to assist this persute.

THE Justice ordanit the Assysouris, lauchfullie summoned and nocht compeirand, to be vnlawit.— Levingstoun of Donypace become caution for the said Andro his entrie, vpone xv dayis wairning, &c.

[CURIA JUSTICIARIE, *s. d. n. Regis, tenta in pretorio de Edinburgh, xx Marcij 1622, per Magistrum Alexandrum Coluile de Blair, Justiciarium; necnon per Dominum Walterum Stewart de Mynto, ballivum Regalitatis de Glesgow, virtute cujusdam deliberationis Dominorum Secreti Consilij.*]

ASSESSOURS TO THE JUSTICE, appointit be the Lordis of Secreit Counfall:

James Archebischope of Glesgow,¹ Sir George Erskyne of Innerteill,² Mr Joⁿ Weymes of Craigtoun.³

**Witchcraft—Sorcery—Charming—Incantation—Soothsaying
—Abusing the People.**

Mar. 20, 1622.—MARGARET WALLACE, spous of Johnne Dynning, mercheand burges of Glesgow.

Dilaitit, accused, and persewit of the feuerall articles and poyntis of Dittay following. DITTAY *against the pannel*,⁴ *Margaret Wallace*.

FORSAMEKILL AS, albeit be the devyne law of Almychtie God, set down in his sacred woird, speciallie in pe 20 chap. of *Leviticus*, and 18 chap. of *Deuteronomie*, aganis pe vsfearis and practizaris of WITCHCRAFT, SORCERIE, CHARMING, and SOTHESAYING, and against the SEIKERIS *of help and respossis of thame*, thraitning and denunceing to pe committeris of sic devillisch practizes the pwneischment of daith. As also, be dyuerse Actis of Parliament, and Municipall lawis of this Kingdome, alsweill publeift and set furth be his Maiestie, in his awin tyme, as in the dayis of his maist noble progenitouris; namelie, be pe 73 Act of the Parliament, haldin be his hienes darrest moer, Quene Marie, of

¹ James Law, formerly Bishop of Orkney. In the year 1615, he succeeded Archbishop Spottiswood, the well-known author of the Church History published in his name; and died in November, 1632.

² Lord Innerteill, one of the Ordinary Lords of Session.

³ An Ordinary Lord of Session.

⁴ This Dittay contains only the four Articles or points of which the Assise convicted this victim of superstition. The nature of the remaining points are clearly defined in the very interesting pleadings, which the Editor has carefully preserved at length, in consequence of their marking, in a striking manner, the prevailing opinions held by the most eminent Scottish lawyers, on the subject of Witchcraft, &c. The subject is so extraordinary, that it was thought advisable to print the pleas and arguments without curtailment.

worthie memorie, it is expresse provydit, statute, and ordanit, that na maner of persone or persones, of quhatfumeur estait, degrie, or conditioun thay be of, presume, nor tak vpone hand to vse any maner of *Witchcraft*, *Sorcerie*, or *Negromancie*, nor gif thame selfis furth to haif any sic craft or knowlege, thair-by abuiseing his hienes people and subiectis; and that na persone seik any help, respons, or consultatioun at ony sic vsearis or abusearis foirsaidis, vnder the pane of death, alsweill to be execute vpone the vsear and abusear, as to the seiker of the respons or consultatioun; as in the saidis Lawis and Actis of Parliament at mair lenth is contenit. NOCHTWITHSTANDING quhairof, it is of verritie, that the said *Margaret Wallace*, schaiking of all feir of God, reuerence or regaird to our fouerane lordis authoritie and lawis, haifing confauet ane deidlie haitrent and evill will aganis *Cuthbert Greg*, couper, burges of Glesgow, becaus of certane speiches vtterit be him aganis hir and vmq^{le} *Cristiane Grahame*, ane notorious Witche, and laitlie execute for Sorcerie and Witchcraft, at Witsfunday a thre 3eir syne, or pairby, the said *Margaret Wallace*, furth of þe malice of hir heart, promiseit and avowit that scho fould mak the said *Cuthbert*, within few dayis pair-estir, nocht of habilitie to work or wyn to him self ane caik of breid; accoirding to the quhilk devillische promise and damnable vow, the said *Cuthbert* schortlie thaireftir, be the said *Margaret* hir devillische Inchantment, Sorcerie, and Witchcraft practizet be hir vpone him, he was visseit and grevoullie trubillit with ane strange vnnaturall and vnknawin disseis, maist crewallie and lamentabillie tormentit with continuall sueiting, be the space of fyftene dayis togidder, and pairby wes brocht to sic infirmitie and waiknes, nane expecting his lyfe, that he was nocht hable to steir or move himself: And the said *Margaret*, as ane Witche and Sorcerar, being suspectit as the onlayer and causer of the said grevous and heavie disseis, was sent for by certane of þe said *Cuthbertis* freindis, and requeistit to cum and vizeit him; and eftir mony malicious refusallis maid be hir, in end scho come to him; at quhais cuming, scho, to manifest hir skill for his help, tuik him be þe schaikill-bane¹ with the ane hand, and laid hir vther hand vpone his breist, and without ony word-speiking, saif only be moveing of hir lipis, past fra him at that instant; and vpone þe morne paireftir, returning bak agane to the said *Cuthbert*, scho tuik him be þe airme and bad him aryse, quha at that tyme, and fyftene dayis befor, was nocht abill to lift his legis without help; zit scho, haifing vrget him to ryse, and taking him be the hand, as said is, brocht him out of his bed, and paireftir led him but² the hous; quha, immediatlie paireftir, be hir Sorcerie and Charmeing practizet be hir, walkit vp and down þe flur, without help or suppoirt of ony; and fra that tyme quiklie recoverit and convalessit of þe former

¹ Wrist. ² To another apartment. In small houses, consisting merely of a 'but' and a 'ben,' the 'but' is the outermost room or kitchen; the 'ben' is a better sort of apartment, where, upon great occasions, company is received. The master and mistress usually sleep in the 'ben' or inner room.

grevous diseais: Quhairin þe said *Margaret* hes committit manifest Sorcerie and Witchcraft, in laying on and taking af feikneffis, be hir devillische meanis, vset and practizet be hir vpone the said *Cuthbert*, in maner foirsaid. AND siclyk, about foure 3eir syne, or þairby, the said *Margaret Wallace*, being within þe duelling hous of *Alexander Vallange*, mercheand burges of Glesgow, and haifing fallin in ane grit and suddane feiknes within þe said hous, scho incontinent þair-efter, as ane consulter and feiker of help and responffis of Witches and Sorceraris, instrumentis of the Devill þair maister, fend for vmq^{le} *Cristiane Grahame*, ane notorious Witche, and quha is laitlie convict and brunt for hir devillerie and Witchcraft, practizet aganis dyuerse his Maiesteis guid subiectis, in Glesgow and þairaboutis; quhilk vmq^{le} *Cristiane Grahame*, haifing cum to the said *Margaret* to þe said Hous, scho tuik þe said *Margaret* furth þairof to hir awin buith,¹ quhair, be the said *Cristiane* hir devillische charmes practizet vpone the said *Margaret*, the said *Margaret* was curet of hir former suddane feiknes. And þe said *Cristiane Grahame*, with the said *Margaret Wallace*, cuming togidder bak agane to the said hous, and at þe turnepok-fute þairof, meitting with *Margaret Vallange*, dochter to the said *Alexander*, thay, at þe leift ane or vther of thame, laid þe said crewall feiknes, be þair Sorcerie and Witchcraft, vpone the said *Margaret Vallange*, ane 3oung infant bairne, quha immediatlie þaireftir, in grit suddantie, fell down to þe grund, the haill power of hir body being tane away frome hir; and with pitiefull screiches, schoutis, and cryis, lying in that horrible payne, nocht hable to arryse, was tane vp be *Margaret Montgomerie* hir moþer, spous to þe said *Alexander*, and brocht in be hir in hir airmes to þe hous, and þair remanit with continuall schouteing and crying, nocht being of habilitie to move or gang be þe space of xxiiij houris þaireftir, quhill² þe said *Margaret Wallace*, vnsent for, come in to vizeit hir; lyk as, þe said *Margaret*, as sone as scho luikit vpone þe said bairne, declairit that it was the suddane transe or diseis that scho had tane the day befoir, and þairfoir willit and desyret the bairnes mother to fend for *Cristiane Grahame* to cure and releif hir þairof: And the said *Margaret Montgomerie* haifing absolutelie refuifit sa to do, saying to hir, ‘scho wad commit hir bairne to God, and nocht mell³ with the Devill or ony of his instrumentis,’ the said *Margaret Wallace* maist blasphemouffie and devillischlie anfuerit agane, that þe said ‘*Cristiane Grahame* could do als mekill, in that eirand, in cureing of that diseais, as gif God him selff wald cum out of Hevin and cure hir—and albeit þe deid-straik⁴ war laid on, scho could tak it af agane—and without hir help þair could be na remeid to the bairne!’ Lyk as, schortlie þaireftir, without the motheris knowlege, the said *Cristiane Grahame* was brocht in be þe said *Margaret Wallace* to þe said bairne; at

¹ Her husband's booth, or shop.² Until.³ Fr. *mêler*.⁴ Literally, death-blow.

quhais cuming, the said *Margaret* liftit vp þe bairnes heid, and the said *Cristiane* tuik hir be þe schaikill-bane,¹ and brocht þe bairne furth of hir bed, quhair scho was lying bedfast in grit payne of befoir; and pairefter, setting hir doun vpone ane stuile, with some croces and signes maid vpone hir, and be vttering of dyuerse woirdis, (nocht knawin quhat thay war,) restoirit hir to hir helth. Quhairin, the said *Margaret Wallace* hes planelie declairit hir selff to be ane oppin and manifest consuler with the said *Cristiane Grahame*, ane notorious Witch, and ane feiker of help and responffis of hir, in her devillisch airt; alsweill for cureing of her selff, as in practizeing with her, be Sorcerie and Witchcraft, to þe cure and help of þe said *Alexander Vallange* bairne, in maner and forme aboue writtin: And þe said *Margaret Wallace* is airt and pairt of þe devillisch practizes abouewrittin, practizet be the said *Cristiane Grahame*, at the time and in maner foirfaid. To the taikin,² the said *Cristiane Grahame*, the day of hir accusatioun and persute, being þe xxvj day of October last, 1621, willinglie, of hir awin accoord, in Judgement, befoir hir convictioun, the Assyse being incloset, affirmet, and with oppin spèache declairit, that þe said *Margaret Wallace* was airt and pairt with hir in all hir wicket deidis; and reffaut fra hir sum cullourit filk and worset, for practizeing of Witchcraft against sic persones to quhome þe said *Margaret* buir invy; and quhan willinglie scho wald nocht geve þe said *Margaret* sic materiallis, the said *Margaret*, as scho saw thame in þe said *Cristianes* handis, wald violentlie reif þame from hir: Lyk as, vpone the morne paireftir, scho being at þe staik befoir hir executioun, ratifeit and renewit the haill premisses to be of verritie. ITEM, a tua 3eir fyne, or pairby, *Margaret Mure*, dochter to vmq^{le} *Archibald Mure*, burges of Glesgow, being hevelie diseasit with ane strange and vncouth seiknes, and nocht liklie to haif recoverit pairof, the said *Margaret Wallace*, geving out hir selff to haif skill in þe cure of the said seiknes, scho come to the duelling-hous of *David Scheirar*, couper, burges of Glesgow, and pair finding *Marioun Mure*, his spous, faper-sister to the said *Margaret Mure*, lamenting and weiping for the said *Margaretis* seiknes, the said vmq^{le} *Cristiane Grahame*, be þe said *Margaret Wallace* hir devyse and directioun, a littill paireftir, come to þe said hous; and þe said *Margaret Wallace*, being acquentit with þe caus of þe said *Mariones* greif, desyret þe said *Cristiane Grahame* to help þe bairne; quhais ansuer was to the said *Margaret Wallace*, that the said *Margaret Wallace* and scho behovet to go first to the place aggreit vpone betuix thame, quhilk place was knawin to þe said *Margaret* hir selff: Accoirding to the quhilk appointment, the said *Margaret Wallace*, with the said *Cristiane Grahame*, past, that same nycht, betuix ellevin and tuelf houris, vnder silence and clud of nycht, to the 3aird of *James Fynlay*, burges of Glesgow, quhair thay remanet the space

¹ Wrist.² In token, testimony, or proof whereof.

of ane hour togidder, practizeing Sorcerie and Witchcraft, for cuiring of þe said bairne, and taking the said seiknes af hir, be vnlauchfull meanis; lyk as, þat samyn nycht, the said seiknes wes tane af þe said bairne, and scho conualeffit pairof. To the taikin, the said *Margaret Wallace*, in hir going to þe zaird þat nycht, tynt hir pantoun;¹ lyk as, þe said *Marioun Mure*, for þe foirsaid cuir, gaif to þe said *Margaret Wallace* and *Cristiane Grahame* ane guife,² with ane pynt of wyne, within aucht dayis pairestir. ITEM, a tua zeir syne, or pairby, ane discoird haifing fallin out betuix *Alexander Boig*, smyth in Gorballis, and þe said *Margaret Wallace* and *Johnne Dynning*, hir husband, about the bying of ane irne studie³ to *Williame Weymes*, mercheand burges of Glesgow, ane complant was maid vpone him be þe said *Margaret* to *Sir George Elphinstoun of Blitheswoid*, kny⁴, his maister; and becaus scho reffaut na amendis at þe said *Sir George* handis, becaus he tryit⁴ hir complent to be vniust, and only maid vpone malice, the said *Margaret*, maist impudentlie, in presens of þe said *Sir George* and *his Lady, James Pollok*, and *George Thomesone*, his tennentis, oppinlie thraitnet and avowet to do to þe said *Alexander Boig* ane evill turne: ffor effectuating quhairof, scho, be hir Devillerie, Sorcerie, and Witchcraft, prepairit and practizet be hir, laid ane crewall and feirfull seiknes vpone *Boig*, the said *Alexanderis* bairne, of foure zeir auld, within few dayis pairestir; quhilk bairne, with continuall fueiting and vomeiting, deceifit within tua dayis thaireftir. AND last, þe said *Margaret Wallace* is, and hes bene thir aucht or nyne zeiris bygane, ane cownoun consulter with Witches, speciallie with the said *Cristiane Grahame, Katharene Blair*, and vther Witches and Sorceraris, and ane seiker of help and responffis of thame, alsweill for hir awin cure and releif of dyuerse seiknesses and diseassis quhairwith scho hes bene visseit, as for þe cure and help of hir freindis and acquaintance in pair seiknesses and diseassis; as also, for þe overthrow and distructioun of dyuerse persones, men, wemen, and bairnes, be Sorcerie, Witchcraft, Charmeing, and Incantatioun, and vperis devillich and vnlauchfull meanis, expresse prohibeit and forbidden be the Lawis of Almychtie God, and Municipall Lawis of this kingdome; thairby abuseing the people, and puting thame in grit dreddour⁵ and feir of hir and of hir devillisch practizes, vset and practizet be hir aganis sic of our souerane lordis peceable subiectes to quhome scho hes borne ony grudge, or vtterit ony malicious thaitningis. BE the committing of þe quhilkis perticular practizes aboue writtin, as also be the hanting, vseing, and frequenting of þe unhappie socieatie and companie of þe said Witches and Sorceraris, instrumentis of the Devill, fauld and gevin over to him for committing of all maner of mischeif, and in assisting and

¹ Slipper. Fr. *pantoufle*.² Goose.³ Purchasing of a smith's stithy, or anvil.⁴ Ascertained upon examination.⁵ Dread; terror.

taking pairt with thame in þe practize of all foirt of Witchcraft and Sorcerie, and in the feiking of help and responffis of thame, baith for cureing of vnnaturall and vnknawin feikneffes, and for þe malicious inflicting and laying on of dyuerse feirfull and horrible feikneffes and diseaffis vpone dyuerse perfones, for pair overthraw and diftructioun, in maner foirfaid, the faid *Margaret Wallace* hes contravenit the tennour of þe faidis Lawis and Actis of Parliament, and incurrit the panes and pwneifchment of daith fet down pairintill; quhilk aucht and fould be execute vpone hir, with all rigour, to þe terroure and example of vtheris heireftir.

PERSEWARIS, Sir Williame Oliphant of Newtoun, kny^t; Alexander Boig, fmyth in Gorbellis; Johnne Robertoun, querriour, burges of Glesgow, for thame felffis, and as informeris to his Maieftis Aduocat of the haill pointis of Dittay.

PRELOCUTOURIS in defence, Johnne Dynning, mercheand in (Glesgow); Mr Alexander Peiblis, Mr Robert Lermouth, Mr Thomas Nicolfone, younger, (Advocates.)

COMPEIRIT Sir Walter Stewart of Mynto, kny^t, and producet ane delyuerance of the Lordis of Secreit Counsell; quhairof the tennour followis.

SUPPLICATION of *Ludouik, Duik of Lennox.*

MY LORDIS OF SECREIT COUNSALL, vnto 3our Ll. humlie meanis and schawis I 3our feruitour, LODOUIK DUIK OF LENNOX, lord and heritabill Bailzie of the Regalitie of Glesgow, and Sir Walter Stewart of Mynto, kny^t, my depute of þe faid Bailzerie: That quhair, þe tuentie day of Marche instant is appointit to Margaret Wallace to compeir befor the Justice, in the Tolbuith of Ed^r, to vnderly the law for sum poyntis of Witchcraft laid to hir charge: And quhair as, fcho duellis within þe boundis of my Regalitie, and fua is fubiect to me, my office and Jurisdictione, 3it I will nocht conteft in that poynt, nor ftand out aganis þe courfe tane be 3our Ll. for hir tryell; bot for the preferuatioun of þe liberteis and privileges of my office and Jurisdiction, my humble defyre and Petitione vnto 3our Lo. is, that my faid depute may be admittit to fit with his Maieftis Justice in the tryell of the faid Margaret, and to judge pairin with him accoirdinglie—and 3our Lo. anfuer.

[Followis the Lordis delyuerance, vpone the bak of the foirfaid Supplicatioun.]

APUD ED^r, xix Marcij, I^m. Vj^c.xxij. FIAT ut petitur. AL. CANCELL^s. MAR. MELROIS.

Vpone the production of the quhilk delyuerance, the faid Sir Walter askit instrumentis.

THE JUSTICE Ordanit the faid *Sir Walter* to fitt down with him, with the remanent Affeffouris.

THE Dittay being red, and the *ffirst Article* thairof, concerning hir laying on of ane grevous feiknes vpone Cuthbert Greg, couper, burges of Glesgow, be Sorcerie and Witchcraft, and aff-taking of the faid feiknes be the lyk devillifche and vnlauichfull meanes; as the *ffirst Article* beiris; quhilk the pannell haillilie denyit.—It is thaireftir allegit be Mr Alexander Peiblis, as prelocutour for the pannell, that the Dittay and *ffirst Article* thairof can nawayis be put to the knowlege of ane Affyse; becaus it is nocht lybellit, nor fet down in the Dittay, that the fact lybellit was done be the pannell, or the feiknes inflictit be hir. Nixt, it is nocht lybellit *quibus mediis, quibus modis, et quibus malis artibus*, the famyn was accomplifchet; becaus Witchcraft can nocht be accomplifchet as

Witchcraft, bot¹ be characteris, signes, croces, poysonet watteris, poysonet asches, poysonet oyles, powderis, figures, pictouris, poysonet herbis, ruittis, vennemous oyles, woirdis, speiches, by incalling and invocatioun of the name of Sathan, quha, at the accomplisment quhairof, hes promiseit to geve his prefens to thame; without the quhilkis, or ony of thame, Witchcraft can nocht be accomplischet: Nather is it lybellit, that this fact and deid allegit is committit be the pannell, be ony of thir meanis: And sa, that Article can nocht pas to ane Assyse.—To the quhilk it is anfuerit be my lord Aduocat, that the allegiance aucht to be repellit, in respect of the lybell and haill poyntis thairof, tane *conjunctim*; be the quhilk it is affirmet *positiué*, that this feiknes was laid on be the pannell vpone *Cuthbert Greg*, be hir Sorcerie and Witchcraft; and he purget, and relevit, and restoirit to his helth be hir Sorcerie and Witchcraft: And sa, the Dittay, as relevant in that poynt, fould pas to ane Assyse.

It is forder allegit be the pannell and hir prelocutouris, that the woirdis 'laying on and taking af' ar altogidder generall, and can nocht pas to ane Assyse, nevir condiscending in speciall quhat was done; as is fet down in the former definitioun of Witchcraft.—To the quhilk it is anfuerit be the persewaris, that thair is no necessitie to condiscend vpone the forme of the on-laying and af-taking of feiknesses, quhidder be woirdis, signes, croces, and vtherwayis, the persewaris nawayis being previe thairto, nather can thai be vrget to condiscend thairupoun, feing the Witches, practizeris of that vnlauchfull and godles meane, ar best acquentit with the poyntis of thair awin craft: And thairfoir, it being lybellit, relevantlie, that, be hir Sorcerie and Witchcraft, the feiknes was baith laid on and tane af be hir, the samyn fould pas to the knowlege of ane Assyse, as relevant.

It is forder allegit be Mr Thomas Nicolsone, as prelocutour for the pannell, that of the Law *multa indicia debilia nunquam faciunt indicium indubitatum, quia nunquam ea que natura sunt dubia possunt facere rem indubitatum; ut multa integra vnum sanum, multa non alba vnum album*. This is the opinioun of *Pharina cius*, and of *Delrio* in his 5 sect. pag. 728; at the leift, except that thair war ane coherence and necessar subordination of *illa multa indicia*. Bot sa it is, in this poynt of dittay, thair is confuset feuerall articles, quhilkis, *per se*, ar *indicia debilia*; and thair is na coherence amangis thame selffis, in sa far as the promiseing to do him ane evill turne, and the subsequent feiknes, ar nawayis coherent, nather can the ane follow vpone the vther. *SECUNDO, circumstantie indictionum sine quibus ad inquisitionem non proceditur sunt quis, quando, vbi, cum quibus, quomodo circumstantia, quomodo est huic vsui, vt quibus instrumentis factum esse dicatur, vt sint pulveres, vnguina determina mortuorum*. And quhair it appeiris to be allegit in the reply, that *de medijs non potest constare*, becaus

¹ Excepting; unless.

thay are knawin only to the Witches and thair Maister, thair is heirin ane manifest equivocatioun, in sa far as be the determinatioun of the haill traiteris *de Veneficijs, hec duo sunt disperata signa media*; it is grantit *sine mediis*, condisending vpone *medijs*, a lybell may stand relevant; becaus *hec SATANA strata-gemata quibus ille naturaliter vtatur medijs sunt plerumque incognita*; bot of all necessitie, to the lybelling of ane deid of Witchcraft, *accedere oportet superstitionem vt dicatur vsurpasse res aliquas facta vel verba que sapiant incantationem vel dicatur nominatim exercuisse actum aliquem qui ex communi maleficiorum praxi ad malificium dirigitur*. This is DELRIO's opinioun, ceitting the haill treiteis *de Veneficijs*, in his thrid sect. pag. 711; et libro 5, sect. 16, pag. 774. And the premisses, sa authorizet be the haill learnet wryteris, ar of infallible veritie; for this reasone, becaus thair can be na deid of Witchcraft lybellit relevantlie, bot man¹ be sa lybellit, as it is possible, *per rerum naturam*, to the Assyse to cognosce thairupovn; bot it is subsumet, that except sum sensible actioun or signe, or vther thing be lybellit, it is impossible to the Assyse to cognosce thairupoun, *quia nihil est in anima quod non sit prius in sensu*.

The persewaris repeittis thair former ansuer, foundit vpone the haill memberis of the Dittay, tane *coniunctim*; quhilkis memberis coheris verrie pertinentlie—a promise to inflict the seiknes, and laid on—the on-laying of the seiknes, be Inchantment, as the Dittay beiris—and the taking be the hand of the persone vizeit with the seiknes, and releifing him thairof be moveing of hir lipis, &c.: And as for the tryell of the Assyse, the deidis ar verrie publict and knawin; and referris the veritie thairof to the Depositiones of the Witneses alreddie tane, and to be tane in that matter, and to the Assyse awin knowlege.—The pannell adheris to thair former exceptioun, vncondiscending in speciall, *quibus modis, quibus medijs, et quibus malis artibus* to infer Witchcraft.

The pannell quarrellis that pairt of the lybell be the quhilk it is said, that scho inflicted the seiknes be Witchcraft, nocht condisending quhat maner of Witchcraft was vsed for inflicting thairof. And quhair it is said, that the memberis coheris, becaus of a promise and the effect following, the pannell oppones the authority of *Pharinatius*, confirmet be *Delrio*, in the 718 page of his 3 sect.; quhair it is said, *immo mine² delictum subsecutum inimicia non sufficiunt ad penam sortilegij; quia huiusmodi indicia sunt tantum remota*. As lykwayis, a stronger authoritie, pag. 717; quhair it is affirmet, and bakit with resson³, in thir termes, *mine subsecute damno—et si male fame sit minans indicium, sunt insertum ratio potest enim pars offensa alios habere inimicos qui hoc tegmine preter scelus perpetrarunt*: Nather is thair necessitie to affirme *alium fecisse*; becaus the possibilitie of ane instance aganis ane generall reule evinces the incertantie

¹ Must.² Threatening expressions.³ Backed, seconded by argument.

thairof: *Additur, quod in criminalibus nunquam ex presumptionibus proceditur ad condemnationem, sed probationes debent esse luce meridiana clariores.* And as to the vther pairt, concerning the af-taking of the feiknes, thair is na deid lybellit bot ordinarie deidis of vizeiting a patient, be a freind or a phifitioun, to wit, graipping of the pulses or chaikill-bane and breift, quhilk is the fteiring of the fpreittis-vitall, and is the ordiner behauour vset and practizet be the vifitouris of ony patient; and becaus that eftir thais ordiner remedeis the patient arraise, and that fcho maid him to ryse, *est elenchus dilirij.* And forder, the pannellis former authorities man¹ be respectit, becaus thair is na contrair practeis producet.—My lord Aduocat repeatit his former anfuer.

THE *Secund Article of Dittay* being red, and the said Margaret being accuset thairby, viz. that vpone a discord fallin out betuix hir and *Johne Robertoun*, querriour, a thre yeir fyne, fcho thraitnet and avowit to be avengit vpone his flesche; quhairvpone a difeis was inflictit be hir vpone him, quhairin he yit continewis, and that be hir Sorcerie and Witchcraft practizet be hir vpone him.—It is allegit be the pannell, aganis the said fecund Article of Dittay, that the famyn is nawayis relevant anent *Johne Robertoun*; being altogidder coincident with the former Article, and cayreing thairwith far les probabilitie nor² the former; ffor thair is na member thairof relevant to infer Witchcraft, for fa mekill thairof as confistis in fact, tuiching *Robertoun* his inhabilitie to work this thre yeir bygane, throw the inhabilitie of his feiknes, quhilk is manifest fals in the felff: ffor it is evident, be oculer inspectioun, to luik to him presentlie at the bar, that he hes sufficient strenth of body to work: As also, it fall be verifeit, gif neid beis, that he, being an querriour of his craft,³ hes wrocht, thir dyuerse yeiris bygane, to dyuerse perfonas, namelie, to *Sir George Elphinstoun of Blitheswoid*, *George Anderfone in Woidfyde*, and to the pannell, be wyning of ftanes furth of the querrell;⁴ and repeatit the former allegiance maid aganst the ffirst Article. *Igitur, &c.*—To the quhilk it is anfuerit be the persewaris, that the allegiance aucht to be repellit, in respect of the Dittay, quhilk is relevant in it felf. And as to that point confisting *in facto*, the persewar referris the tryell thairof to the Witnesfes producet and to be producet, and to the perfonas of Affyse, quha aucht to cognosce vpone the haill poyntis of Dittay, confisting *in facto*.

It is forder allegit be Mr Thomas Nicolfone, that the said fecund poynt of Dittay is altogidder irrelevant; becaus of the Law, *indicium minarum et damni subsequuti*, quhilk is the only substance of this point, and is nawayis relevant of the Law, *quoties delictum ex intervallo dicitur subsequutum*; bot fa it is, in this Dittay, it is lybellit, that the thraitning of *Johne Robertoun*, and the inflicting of the difeis, was within this yeir and this half, quhilk is *ex intervallo*; And

¹ Must.² Than.³ To his trade.⁴ Stone quarry.

quhair as, it appearis that this feiknes is inflicted immediatlie eftir ane vther thraitning maid to the wyfe of *Johnne Robertoun*, *nullo modo relevat*; becaus *vt mine et damnum subsecutum faciunt indicium, oportet vt sit eadem persona cui mine et damnum dicuntur inferri*; sa that the thraitning to the wyfe, and inflicting feiknes vpon hir husband, is na relevant poynt. *Item, mine et damnum subsecutum nullum omnino faciunt indicium, nisi mine fuerint specificate, seu de eodem quod subsecutum est in specie*; ffor ane general thraitning to do ane evill turne, nocht condiscending vpon the speciall evill turne, can haif na coherence with ane speciall skaith following thairaftir, to mak it *venefice*; becaus *mine et damnum subsecutum* ar comptit *aliquale indicium maxime respectu predictionis*, as ane maner of futhe-saying; and that can be comptit na futhe-saying quhilk ony man could lykwayis foirtell by¹ ane Witche, viz. *predicere de genere et subsecutum esse speciem*.—My lord Aduocat adheris to his former ansuer.

THE *Thrid Article of Dittay*, anent ane discord that fell out betuix the pannell and *Jonet Harper*, and of ane thraitning and vow maid to mak the said *Jonet Harper* in a worse cais nor² hir poysonet swyne; and anent ane feirfull feiknes quhairin scho schortlie thaireftir fell be the pannellis Sorcerie, Incantation, and Witchcraft—It is allegit be the pannell and his prelocutouris, that the thrid Article is nawayis relevant, nevir condiscending quhat maner of Inchantment scho was bewitched with, and be quhat factis and deidis this was done, and quhat was vset be the pannell for that effect.—It is ansuerit be my lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay.

THE *ffourth Article of Dittay*, anent the pannell hir being within *Alexander Vallange* hous, quhair scho fell in ane grit and suddane feiknes; and hir sending for vmq^{le} *Cristiane Grahame*, ane notorious Witche, and consulting with hir for hir relief of that feiknes; and eftir the said *Cristiane* hir cuming, of the pannellis passing out of the said *Alexander Vallange* hous to hir awin buith, with the said *Cristiane*, quhair scho was charmet and curet; and thaireftir the same feiknes, be devillerie and Witchcraft, cassin vpon *Alexander Vallange* bairne; and anent the said *Cristiane Grahame* hir cuming with the pannell to the bairne, and cureing hir, be taking af agane of the said feiknes; and for airt and pairt of the af-taking and on-laying of feiknes, and of af-taking the samyn agane af the said bairne with the said *Cristiane*; and consulting and practizeing of Witchcraft with hir for that effect, &c. The samyn being red, and the pannell indytit thairof—It is allegit be the pannell and hir prelocutouris, aganis the said fourt Article, that the first pairt thairof is nawayis relevant, beiring that scho contractit ane suddane diseise, and for cureing thairof, send for *Cristiane Grahame*, ane notorious Witche, except it had bene expresse lybellit, that the tyme the

¹ Besides; *forbye*; independent of.

² Than.

pannell fend for hir, scho was ane notorious Witche, of the pannellis knowlege, and that scho fend for hir as ane notorious Witche, *ad hunc effectum*, to cure hir of that diseis: And it is nocht lybellit nather, that quhan *Cristiane* come, the pannell consultit with hir as with ane Witche; ffor, it is supponit¹ that ane Notter² war hangit for ane ffals Instrument, and he had gevin the excipient ane Seifing tuentie yeiris afoir, is that Seifing, gevin sa lang befoir, ffalfe? Na mair can that be ane poynt of Dittay, the pannellis sending for *Cristiane Grahame*, except scho was knawin to hir at that tyme to be ane Witche. The secund member is nawayis relevant, beiring that scho curet the pannell in the buithe, for that makis ane contradictioun, that scho was deidlie diseaset quhan scho come, and thaireftir raife and past to the buithe, and thair was curet. The thrid member is nawayis relevant, beiring that the pannellis feiknes was cassin on the bairne, being lybellit that the samyn was done be the pannell, or be *Cristiane Grahame*, or be ane or vther of ws (thame). The fourt member is nawayis relevant, becaus it is confessit in the Dittay, that the pannell was curet in the buithe; and thaireftir come out of the buithe to the hous, and cuist it on the bairne: Gif the pannell was curet in the buith, quhair was the feiknes? *Hoc est impossibile*. As to the rest of the poyntis of that Article, that scho come down to the hous, vnfent for, quhair the bairne was; that can be na poynt of Witchcraft. That the pannell declairit it was the feiknes scho had, *non relevat*, except it had bene verifeit and tryit³ that hir self had bene bewitched. And as for that member thairof, desyreing to fend for *Cristiane Grahame* to help her, *non relevat* to infer Witchcraft, except scho had knawin the said *Cristiane* to be ane notorious Witche. As to the rest of that Article, quhilk the pannell alto-gidder denyis, vpone hir aith and conscience, quhan the judge demandis hir; and albeit it war grantit, yit it is na poynt of Witchcraft, bot rather Blasphemie, and blasphemous speiches, quhilk can nocht coheir with this lybell of Witchcraft; bot is content, quhan evir scho fall be tryit and fund guiltie, to vnderly the pwneischment of the lawis of the cuntrie. That poynt of the Dittay, that *Cristiane Grahame* come at the pannellis desyre and curet the bairne, is nocht relevant to infer the cryme of Witchcraft aganis the pannell, except the samyn had bene done at hir speciall command, *malis artibus et veneficis artibus*, for the hailling of hir. It is nocht lybellit that the samyn was done be the pannell, or at hir command, or be ony Sorcerie or Witchcraft vset be hir for that effect: And as to *Cristiane Grahame*, quhat scho did, the pannell can nocht be pwneist thairfoir. And as to *Cristiane Grahames* pretendit Confessioun, quhilk is nocht producet, it can nocht be respectit, *quia est dicta socia dicti criminis*; nather is the samyn relevant, albeit it war trew, as it is nocht, ffor hir confessioun can nocht

¹ Supposed, or argued, for the sake of illustration. ² Notary public. ³ Proved; established legally.

work aganis Margaret Wallace, *quia dicit se esse sociam dicti criminis; et dicente se sociam criminis non creditur, quia ex suo dicto est infamis et sic testimonium perhibere non potest; precipué, quia malefici, venefici qui ad sortilegos divinosque concurrunt nullatenus ad testimonium sunt admittendi.* And quhair as it may appeir, that in crimine venefici, vt in casu excepto, etiam infames admittuntur; hoc verum non est nisi cum dupliciti cautela, vna quod confessio infamis sit jurata non enim ei creditur nisi testi, et non testi nisi jurato: The secund cautell is, non fidem facit dictum socij nisi confirmatum sit in tormentis. Dammoderius, Tit. de Reprobatione.

The perfewaris allegis, that the haill allegeances proponit aganis the ffourt Article aucht to be repellit, in respect of the Article and haill memberis thair of, tane *coniunctim*; and quhair it is allegit that the Article is nocht relevant, except it war affirmet that *Margaret Wallace* knew *Cristiane Grahame* to be ane Witche, that pairt aucht to be repellit, in respect of the expres woirdis of the Dittay, beiring, ‘ that the said *Margaret Wallace* affirmet that *Cristiane Grahame* had als grit knowlege as God him selff, and as gif God him selff wald cum out of Hevin and cure hir! Albeit the deid-straik war laid on, scho could tak it af agane!’ As to the argumentis proponit aganis that pairt of the Dittay foundit vpon the Depositiones of *Cristiane Grahame*, that pairt is verrie relevant, and the argument is only proponit aganis the probatioun; to the quhilkis argumentis sufficient anfueris fall be maid the tyme of the verificatioun of that poynt of the Dittay; at quhilk tyme, it fall be maid cleir, baith be Law and practique, that in matteris of Treffone and Witchcraft, and vtheris caices exceptit, wemen, *socij criminis*, and infame¹ persones ar admittit Witneffis.

The pannell, adheirand to hir former allegeance, affirmes that that member of the Article of Dittay is nawayis relevant, becaus scho is summond to anfuer to ane lybell of Witchcraft, and that pairt of the lybell inferrit be the perfewaris repeiting thais odious and vnrehairfable speiches, as ane argument of the pannellis knowlege of *Grahame* to haif bene ane Witch, the samyn ar woirdis of Blasphemie: Quhilkis being plane Blasphemie, (nocht granting the speiking thair of,) scho is nocht haldin to anfuer to that pairt thair of, in this persute; nather dois the lybell conclude ony thing aganis the pannell, to infer hir to haif knowlege that *Cristiane Grahame* was ane Witche, (vnder protestatioun, the pannell denyis thame altogidder to be of verritie, as ofbefoir,) yit the samyn being bot woirdis, can nocht infer ane cryme of Witchcraft, it nocht being confessit be the pannell to be trew; nather can it furneise a Dittay of Withcraft, quhairvpon scho may be accuset, nor reput nor estemit a Confessioun, nocht being maid judicialle, bot allegit spokin be ane wyfe to ane vther, vpon certane

¹ Persons declared, or considered, infamous by law.

altercationes arryfeing amangis thame. *Igitur, &c.* And to the anfuer *de sociis criminum*, thair is na anfuer maid speciallie to that pairt, quhair it is said, *non creditur socij testimonio, nisi confirmatur tormentis*. As to ony Confessioun maid be *Grahame* eftir hir convictioun, *nihil operatur, et non relevat* to put the pannell to ane Affyse thairfoir.

THE ffyft Article of Dittay being red, anent the cureing be Sorcerie and Witchcraft of *Margaret Mure*, dochter to vmq^{le} *Archibald Mure*, of ane strange and vnknawin difeafe, be taking af the said feiknes af the said bairne, be the help and affiftance of *Cristiane Grahame*, and consulting with the said *Cristiane* thairanent, being a notorious Witche; the said *Margaret Wallace*, with the said *Cristiane Grahame*, haifing paf, vnder filence and clud of nycht, to the zaird of *James Fyndlay*, burges of Glesgow, quhair thay abaid togidder the fpace of ane hour, practizeing Sorcerie and Witchcraft for cureing the said bairne, and taking the said feiknes af hir; as at lenth is fet down in the said ffyft Article: And the said *Margaret* being accuset thairof—It is allegit be the said *Margaret* and hir prelocutouris, that the said ffyft Article is nawayis relevant, nor na pairt thairof; nevir condifcending in fpeciall quhat fcho did, quhat Sorcerie or Inchantment fcho vset or applyit, or quhat was practizet be hir for taking af the feiknes af the bairne; nor yit condifcending vpone the meanis of Sorcerie or Witchcraft, quhidder be fignes, woirdis, croces, incantatioun, invocation of the Devillis name; without the quhilkis, Witchcraft can nocht be accomplifchet.—It is anfuerit be the perfewaris, that the allegiance aucht to be repellit, in respect of the article of Dittay, beirand the feiknes to be tane af the bairne be the pannellis Sorcerie and Witchcraft, practizet be hir and *Cristiane Grahame*, for the bairnes help, and cure thairof be vnlauchfull meanis.

THE Saxt Article of Dittay being red, and the said *Margaret* accuset thairof, viz. that fcho, haifing confauet ane deidlie haitrent aganis *Robert Mure*, mercheand burges of Glesgow, thraitnet him with mony outrageous fpeiches, faying to him, ‘Thow fall gang hame to thy hous, and fall bleid at thy noife ane quart of bluid, bot fall nocht die quhill (until) thow fend for me and ask me forgivenes;’ quhairvpone fchortlie thaireftir, be the said *Margaret* hir Sorcerie and Witchcraft practizet vpone him, he contractit ane grevous and fuddane feiknes, quhairaf he deceiffit; quhilk is confeffit in prefens of Witneffes—It is allegit be the pannell and hir prelocutouris, aganis the Saxt Article, that the famyn is nocht relevant, for the particuler answeris and argumentis maid to the hail Articles of befoir, quhilk the pannell repeittis, and everie ane of thame, as ane fufficient allegiance, *brevitatis causa*, to ftay the famyn to pas to ane Affyse: And as to hir pretendit Confessioun, maid in prefens of Witneffes, can nocht be respectit, becaus *est Confessio extra-judicialis que non tenet confitentem nisi in judicio fac-*

tam : And albeit it war grantit, as it is nocht, that scho maid ony sic Confessioun, scho may reseill¹ thairfra ; and sa is na relevant poynt to pas to ane Affyse ; quhilk is confirmet be the authoritie of SALICOTUS, L. finali, codice *de Probationibus ; probationem seu Confessionem sponte factam potest reus revocare, et confessus non est condemnandus nisi constet de corpore delicti, id est damnum datum esse malificium facinoris*. Libro 1 de Contraverfiis, cap. 28. *Item*, we haif ane expres text, Lege prima, § Divus, ff. de Questionibus ; *Confessiones reorum pro exploratis facinoribus haberi non oportere, et Confessio extrajudicialis non sufficit ad qualificationem delicti*. JULIUS CLARUS, Lib. 5, § finali, quest. 55, num. 2. *Immo Confessio facta coram Judice non sedente pro tribunali est tanquam facta privata et ex ea reus non potest condemnari*.

It is anfuerit be the persfuaris, that the saxt Article is verrie relevant, being tane *coniunctim*, becaus it contenis ane promise to do the deid, the doing of the deid, and the confessioun thaireftir of the doing thair of. And as to the Confessioun, that the samyn is maid extra-judicialle of ane cryme committit, that extra-judiciall Confessioun is lauchfull and valid to condampne the pairtie quaha hes confessit. Dammoderius, cap. 54, num. vltimo.—It is duplyit be the pannell, that the samyn is contrair to the text, and Dammoderius speikis na thing of ane extra-judiciall Confessioun ; and repeatit thair perticuler anfuer maid to the particuler Articles of Dittay ofbefoir.—The persfuar also repeatit the hail particular anfueris maid ofbefoir.

THE *Sevint Article of Dittay* being red, and the pannell accuset thairby, that a ffyve or sex yeir fyne, scho being convenit befor the Seffioun of the Kirk of Glasgow, and accuset be *Mr Archibald Glen*, Minister at Carmunnok, ffor rayleing on the said vmq^{le} *Robert Mure*, brother-in-law to the said *Mr Archibald*, and raleing on *Elspeth Arbuckle*, his mother, and for taking away of the said *Robert Mures* life be Sorcerie and Witchcraft ; and that the said *Margaret*, in revenge thair of, schortlie thaireftir, be hir Sorcerie and Witchcraft, laid ane feirfull and vnknawin seiknes vpone the said *Mr Archibald*, quhairof, be continuall fueitting, he deceiffit ; and sa, was airt and pairt of his daith ; quhilk scho hes confessit, senfyne, in presens of witnesses. It is allegit and anfuerit be the pannell, *vt supra*, against the *sevint Article*, baith anent the fact and pretendit Confessioun lybellit, ffor thair is na thing qualifeit of Sorcerie, or Withcraft, or Inchantment, done to the said *Mr Archibald* : for the treuth is, that the man deceiffit of ane consumption of his lichtis ;² nather is it lybellit that scho inflictit ony thing vpone him be signes, croces, inchantit herbis, oyles, claithes, or ony vther meanis.—The persfuaris anfueris, that the said allegiance aucht to be repellit, in respect of the *sevint Article of Dittay*, relevant in the selff, and anfueris maid ofbefoir.

¹ Withdraw ; retract ; *resile*.

² Lungs ; pulmonary consumption.

THE *Aucht Article* being red, and the pannell indytit, fforfamekill as fcho, haifing confauet ane deidlie haitrent aganis *Williame Mure*, flesccheour, a fyve yeir fyne, for calling *Cristiane Grahame* ‘ane rank Witche,’ fcho, in revenge thairof, come to the faid *Williame*, vpone the Hie Streit of Glesgow, and in grit wraithe faid to him, ‘Go thy wayis hame, bludie boutcher that thow art, thow fall nevir fie the calsay¹ agane, bot fall suddanlie fchute to deid in thy awin chyre!’² Accoirding to the quhilk thraitning be the faid *Margaret* hir Sorcerie, Devillerie, and Incantatioun, ane feiknes was laid vpone the faid *Williame*, and vpone the morne thaireftir, in his awin chyre, in grit suddantie deceiffit: Quhilk fcho hes confeffit to be of verritie, in prefens of Witnesfes; and fa is airt and pairt of his death.—It is allegit be the pannell aganis the *Aucht Article*, *ut supra*, with this eik,³ that thair is nathing qualifeit thairin of Witchcraft done be hir to him, bot that fcho gaif him evill woirdis, and be thais woirdis he deceiffit. As to the pretendit Confessioun thairin contenit, anfueris thairto *ut supra*.—My lord Aduocat repeittis the woirdis of the Dittay, and former anfueris maid be him to the haill former poyntis thairof.

IT is forder allegit be the pannell and hir prelocutouris to the *Nynt Article*, anent the bewitching of *Allane Speiris*, in maner thairin specifeit, without offence of my lord Aduocat, that all thais Articles contenit in the Dittay ar meir⁴ fabulous, resolveing only vpone ‘he faid and fcho faid.’⁵ And forder, oppones to his lordfchip all the authoriteis foirfaidis; and na practiques in the contrar ar producet, bot ane naikit affertioun.—My lord Aduocat repeittis the Dittay, quhilk is verrie relevant, and als relevant a Dittay as ever was maid in Scotland, vpone fic a fubiect; quhilk is mair relevant in everie article nor the Dittayis producet aganis *Barbara Naper*, *Ewfame M^ccalseane*, and *Agnes Sampfone*, quha war put to ane Affyse, and convict, &c.⁶

The pannell addis forder, that *damnum infecutum ex longo intervallo* is nocht relevant; pag. 717, Lib. quinti, sectionis tertij Martij Dalrio.

THE *Tent Article of Dittay* being red, and the pannell thairby accuset, beiring that a tua yeir fyne, or thairby, ane discord falling out betuix hir and *Alexander Boig*, fmyth in Garboillis, about the bying⁷ fra hir and *Johnne Dynning*, hir husband, of ane irne studie to *Williame Wemyes*, fcho thraitnet to do the faid *Alexander* ane evill turne; ffor performeing quhairof, fcho, be hir devillerie and Witchcraft practizet be hir, laid ane crewall feiknes vpone the faid *Alexanderis* bairne, fa that, with continuall fueitting, within tua dayis the bairne deceiffit, &c.—AND ficlyk, the *Last Article of Dittay* being red, and fcho also accuset thairof, beiring hir to haif bene thir aucht or nyne yeiris bygane ane cownoun

¹ Causeway, or street. ² Chair. ³ Addition. ⁴ Merely. ⁵ Mere matter of idle hearsay, without foundation in truth, and not supported by legal evidence—‘says he’ and ‘says she.’
⁶ See their Trials, in this Collection, Vol. II., pp. 230, 242, and 247. ⁷ Purchasing.

confulter with Witches, speciallie with *Cristiane Grahame*, *Katharene Blair*, and vther Witches and Sorceraris, and ane feiker of help and responffes of thame, baith for diftruction of dyuerfe perfones, men, wemen, and bairnes, be Sorcerie, Witchcraft, and Incantatioun, and vtheris devillifche meanis, expreflie forbidden be the Lawis of Almychtie God, and Municipall Lawis of this Kingdome ; as alfo for cureing and help of hir felf, in dyuerfe feikneffes, and of dyuerfe hir freindis and acquaintance, &c.

It is allegit be the pannell and hir prelocutouris againft the *Tent Article*, that the famyn is nawayis relevant, for the argumentis befoir proponit, with this additioun, that in accomplifcheing of Witchcraft, practizeing thair of, the maner, forme, and qualitie of Inchanting is neceffarilie requyret, quhilk is nocht heir lybellit ; nather that thair was ony Witchcraft vset be the pannell be ony Article of the Dittay, and be woirdis, fignes, croces, ruitis, herbis, poyfone, or be inchantit pictouris, fpeiches, or be invocatioun of the Devillis name, without the quhilkis Witchcraft can nocht be accomplifchet.—As to the *Last member of the Dittay*, it is fa generall, that it mereittis na anfuer. As to that poynt of the Dittay, anent confulting with *Cristiane Grahame* and *Katherine Blair*, that is altogidder generall and irrelevant, nocht condifcending vpon the tyme and place, *quando et ubi*, nor yit condifcending quhairvpone thay consultit, quhidder vpone Witchcraft or vthirwayis ; and that the pannell, the tyme of thair meitting, knew thame to be Witches, and consultit vpone Witchcraft with thame as Witches : And quhair as, fcho helpit hir freindis, *non relevat*, nocht condifcending thair names, or quhair-with thay war helpit. ITEM, it is anfuerit to that pairt of the Lybell, *per totum*, quhair it is faid, that the pannell inflictit difeaffis, be Inchantment, and Sorcerie, and Witchcraft, nocht condifcending quhat foirt of Inchantment or Sorcerie ; *quia vt inquisitio fit valida, oportet fit clara, certas delicti qualitates et circumstantias continens, de quibus posset Judex judicare* : Bot, *de incantamentis in genere nemo Judex potest judicare* : Ergo, the fpecies of the Inchantment man¹ be expreffit be fum figne or speciall deid ; *et ratio est, quia ne per incertitudinem, generalitatem, et obscuritatem tollatur reo defenfio*. DELRIO, Lib. 5, fect. 2, pag. 617. I argu, *a simili*, iff it war lybellit, that a man had burft out ane vther manis guttis with rolling over ane beift vpone him, *non relevat*, except ye fay quhat beift, and fic ane beift as mycht haif done it ; ffor ane mous could nocht haif done it ! Ewin fua, it being only lybellit, it was done ‘ be Inchantmentis : ’ And gif thay war speciall, I wald contend, that thai war naturall meanis, and na Sorcerie. And thairfoir, the generalitie is altogidder irrelevant, takand away my exceptioun ; for gif thai war speciall, we mycht reffone and difpute quhidder thay war Inchantmentis or no Inchantmentis.

¹ Must.

ITEM, *per totum* to the haill lybell, *non relevat* 'vncouth feiknes,' except it war in lyk maner qualifeit, quhat is vncouth;¹ ffor quhat can the Affyse cognosce quhat is vncouth or nocht vncouth, it nocht being, condiscendit quhat is 'vncouth feiknes,' quhilk is to be judget be thame quhidder it be vncouth or nocht? And for the fueiting, *nullo modo relevat*, for the proponer fuat² in ane feiknes ane haill moneth, and fueitting is ane naturall purgatioun. *Igitur*, &c.

The Aduocat repeitis the haill Articles aboue writtin, quhilkis ar speciall in thame selffis.

THE JUSTICE and ASSESSOURIS continewis thair Interloquitour, vpone the haill allegeances aboue writtin, to the morne; and Ordanis the pannell to be tane bak agane to waird, in the mean tyme. The Affyse wairnet *apud Acta* to compeir agane the morne, the xxj *instantis*, in the hour of caus; ilk perfone vnder the pane of tua hundreth merkis.

INTERLOQUITOUR of the Judges and Assesfouris.

Mar. 21.—THE JUDGES and Assesfouris, be thair Sentence-Interloquitour,³ Repellis the haill allegeances aboue writtin, in respect of the Dittay, and ansueris maid be his Maiesteis Aduocat, in fortificatioun thair of. And as to *the last Article*, quhilk is generall, ffindis the samyn relevant, with ony ane of the ten Articles of Dittay, *et non per se*: And thairfoir, Ordanis the samyn to pas to ane Affyse, viz. the haill ten Articles of Dittay, as relevant; and the last general Article, with ony ane of the ten.

ASSISA.

Johnne Lawfoune, mercheand burges of Glesgow,	Robert Bell, wrycht thair, James Mitchell, tailzeour,	Airthour Gilmour, mercheand, James Fallis, mercheand,
Jo ⁿ Dikfoune, mercheand thair,	Patrik Bell, elder,	Johnne Boyd, mesoune,
Andro Fales, mercheand thair,	Williame Anderfoune, cordiner,	Johnne Anderfoun, cordiner,
George Louk, mercheand thair,	Johnne Gilmour, mercheand,	Andro Ker, cordiner, burgeffes of Glesgow.
Williame Neilfoun, maltman thair,		

OBJECTIONS against Assifers.

It is allegit be the pannell aganis *Johnne Dikfoune*, that he can nocht be admittit vpon hir Affyse, becaus thair is inimitie and evill will betuix *Johnne Dynning*, the pannellis husband and him, vnreconceillit this ten yeir bygane: Lyk as, the said Johnne Dikfoune, being dyuerse tymes travellit with to be reconceillit with the said Johnne Dynning, refuisset.—It is ansuerit, the allegeance aucht to be repellit as nawayis relevant, becaus inimitie is na caus, except he say, that thair was bluid betuix thame.—It is forder allegit, that he can nocht be admittit, becaus he hes behavit him self as pairtie, and hes gevin partiall Counfall, in preiudice of the pannell; in sa far as scho, being tane be the Proveist, Bailleis, and Counfall of Glesgow, without ane Warrant, out of hir awin hous, was put in waird in the Castell be thame: In the quhilk taking and committing of hir to waird, the said Johnne Dikfoune wes ane speciall affister of the saidis Proveist and Bailleis.—It is ansuerit be the persewaris, that the allegeance mereitis nocht ane ansuer, feing he did nothing but the dutie of ane honest citizen and burges, to affist the Magistrat to apprehend a malefactour, being suspect of sic haynous crymes.—Johnne Dikfoune, being

¹ Strange; indescribable.

² Sweated.

³ Interlocutory sentence, or judgment.

solemlie fuorne, and declairing that, to his knowlege, thair was nevir discord nor inimitie betuix Johnne Dynning and him, the Justice thairupoun, and vpon his declaratioun that he had gevin na partiall counfall in this cause, admittis him.

It is allegit aganis *Walter Sterling*, mercheand, that he can (nocht) be vpon this Affyse, becaus he is brother-in-law to *vmq^{le} Robert Mure*; thair being ane speciall poynt of Dittay fet doun aganis the pannell, for allegit iniurie done to Robert Mure.—Ansuerit, aucht to be repellit, becaus thair is na perfute movet aganis the pannell be the kyn and freindis of Robert Mure, and thairfoir fould be admittit. —It is forder allegit, that Walter Sterling, brother-in-law to Robert Mure, can nocht be admittit, becaus ane Dittay being fet doun aganis me for ane wrang done to Robert Mure, ilk poynt of Dittay is fund relevant and ordanit to pas to ane Affyse; the said Walter can nocht be ane Affysfour aganis me, being perfewit vpon my life.—My lord Aduocat anfueris *ut supra*, that nochtwithstanding thairof he fould be admittit, except Robert Mure, or sum of his freindis, war ather perfewaris or defenderis, or vpgevearis of the Dittay, or Informeris to his Maiesteis Aduocat thairin.—THE JUSTICE Ordanis Walter Sterling to stand by; and to call ane vther.

It is allegit against *Williame Neilsone*, elder, that he can nocht pas vpon this Affyse, becaus he is brother-in-law to *Johnne Nicoll*, wryter, quha hes behauit him selff as pairtie, in geving informatioun of the Dittay, and is present at the bar affisting the perfewaris in this perfute.—Ansueris, the allegiance aucht to be repellit, becaus Johnne Nicoll is nocht a perfewar, nor the Summond is nocht raifit at his instance.—Williame Neilsoun, being fuorne, and purget be his ayth of partiall counfall, is admittit be the Justice.

Williame Anderfone, cordiner. It is allegit aganis him, that he can nocht be admittit vpon this Affyse, becaus the pannell, haifing skill in chirurgerie, fauld to him sum drogis, quhilk he haifing postponit the pannell in payment, scho thairfoir perfewit him be ordour of Law thairfoir; quhairvpon ane inimitie fell out betuix thame, quhilk is yet vnreconceilit.—The said *Williame*, be his grit (aith) being purget of partiall counfall, is admittit.

VERIFICATION of the perticuler poyntis of Dittay.

MY Lord Aduocat takis instrumentis of the fweiring of the Affyse; and, for verificatioun of the perticuler poyntis of Dittay following, vses and produces the probatioun and Witnesses efter specifeit. And first, for Verificatioun of *the ffirist Article (of Dittay)* anent *Cuthbert Greg*, produces *Charles Pollok* and *Margaret Dynning* as Witneffis, desyreing thair Depositiones to be tane.

Chairlis Pollok, couper, burges of Glesgow, sworne judiciallie, and examinat in prefens of the Judges, pairteis, and Affysfouris, and purget of partiall counfall, mareit, of the aige of threttie yeiris, declairis, that a thre yeir syne, or thairby, ane differ¹ being betuix Cuthbert Greg and Cristiane Grahame, for ane dog quhilk Cristiane desyret fra him, and he refuifet, anfuering to hir agane, ‘I rather ze and my huffie² baith (meaning be *Margaret Wallace*) war brunt or³ ze get my dog!’ Quhairof *Margaret Wallace* getting knowlege, scho comes to *Cuthbert* and sayis to him, ‘ffals land-loupper loun that thow art, sayis thow that Cristiane Grahame and I fall be brunt for Witches? I vow to God I fall do to ze ane evill turne!’ And declairis, that, within foure or fyve dayis thaireftir, the said *Cuthbert* fell feik. Being inquiryret, gif he hard hir say thir woirdis, ‘that *he (she)*

¹ Quarrel; difference; altercation.

² Cummer; gossip.

³ Rather than.

fould mak *hir* (*him*), within few dayis, nocht of habilitie to wyn ane caik of breid?' Denyis that he hard sic woirdis—bot only that scho fould 'do him ane evill turne.' Sayis, he saw *Cuthbert Greig*, the tyme of his feiknes, fueitting and brocheing¹ in ane vncouth feiknes, fairlie handillit, quhairby he was nocht able to gang; bot knawis nocht how lang he swat, or abaid in that estait. Demandit, gif he saw Margaret Wallace cum in to Cuthbert, at ony time of his feiknes? Declairis, he saw hir nocht within that hous; and forder, knawis nocht anent that first Article of Dittay.

Margaret Dynning, the spous to Andro Lennox, fuorne and examinat vpon the first Article, concerning Cuthbert Greg, and desyret to tell the treuth, sa far as she knawis thairanent; Depones, that the tyme of Cuthbertis feiknes, the deponer and Margaret Montgomerie, with Margaret Wallace, past all thre togidder vp to Cuthbertis hous, to visseit him, the tyme of his feiknes; at thair in-cumming, declairis, scho saw Margaret Montgomerie, with Margaret Wallace, pass to his bed-fyde quhairin he lay, and that the said Margaret Wallace sat down with hir bak to him, the deponer hir self nocht being able to wyn ben the hous, becaus of the thrang of peopill in the hous, at that tyme: And forder knawis nocht.

FOR the Second poynt of Dittay, concerning *Johnne Robertoun*, querriour, desyres the said Johnne Robertoun, as persewar, his ayth to be tane, and that poynt of Dittay to be fuorne be him, gif he has just caus to persew the pannell as giltie thairof? Quha, being solemplic fuorne, declairit, that the said Margaret Wallace avowit 'to be avengit vpon his flesche!' And that schortlie thaireftir, conforme to the Dittay, the feiknes was laid vpon him; and thairfoir, hes just caus to persew the said Margaret, for that poynt: And eikis² thairto, that sen the making of that vow be hir, he was nevir able to wyn him self fyve s. (shillings.) Quhairvpon my lord Aduocat askit instrumentis.

Chairles Pollok being producet, and fuorne vpon the secund Article of Dittay, anent the said Johnne Robertoun, querriour; declairis, he knawis na thing thairof, except allanerlie, that he saw him hevelie diseasit.

As to the *Thrid Article of Dittay*, referris the notorietie of the pannellis giltines thairof to the Assyse.

FOR verificatioun of the *ffourt Article*, my lord Aduocat producet *Cristiane Grahames* Deposition, tane be my lord *Archebischope of Glesgow*. As also, produces *Marioun Mitchell*, the spous of Johnne Hunter, and desyres hir to be examinat, and her Deposition to be writtin.

Marioun Mitchell, the spous of Johnne Hunter, tasker,³ fuorne, and examinat

¹ Commonly pronounced *broiching*; in the last stage of exhaustion, through profuse perspiration. The English word *sweltering* conveys something of the same meaning.

² Adds; subjoins.

³ Day-labourer.

vpone the ffourte Article of Dittay, in presens of the Judges, Affyfouris, and parteis, judiciallie, Depones, that four yeir fyne, or thairby, Margaret Wallace and Robert Stewart come to the duelling-hous of Alexander Vallange, in Glesgow, quhair the deponer was fervand for the tyme, and callit for ane choppin of aill; quhilk was brocht be ane boy to thame, namet James Symfone; and in drinking thairof, betuix Robert Stewart his taking the cope and offering it to Margaret Wallace, the said Margaret tuik ane suddene brasche of seiknes, vnknawin to the deponer quhat seiknes it was, quhairin the said Margaret was sa extremelie handillit, that scho was liklie to ryve hir selff:¹ Thaireftir scho cryis, ‘Bring me hither my deir burd!’—And Margaret Montgomerie, the guid-wyfe of the hous, being present, anfueris hir, ‘Quhilk deir burd wald ze haif? I beleif,’ sayis scho, (thinking it had bene *Johnne Dynning*, hir husband,) ‘he is nocht at hame!’ ‘Na,’ anfuerit Margaret Wallace, ‘bring me *Cristiane Grahame*, my deir burd!’ All this quhyle, Margaret Montgomerie was halding hir be the ane hand, and Cristiane M^cclaulane be the vther. Thaireftir, at hir desyre, Robert Stewart past, and with grit dilligence brocht Cristiane Grahame to hir, at quhais suddane cuming, Margaret Montgomerie sayis to Robert, ‘Jesús saif ws! I beleif thow hes met her be the way!’ And Cristiane Grahame anfuerit, ‘ffayth, he met me nocht, bot come and brocht me out of my awin chalmer; and fra I hard that my burd was sa diseasit, I sped me hither!’ Sayis, thaireftir, that Cristiane Grahame tuik Margaret Wallace be the schaikill-bane,² and kist hir; and in hir airmes cayreit hir down the stair, saying to hir, ‘Nothing fould aill hir.’ Eftir quhais outgoing, Margaret Vallange, dochter to the said Margaret Montgomerie, ane infant bairne of foure yeir auld, followit thame down the stair; and in the ganging out at the zet,³ over the dur-threschold, scho fell down in a suddane and grevous payne, and grat vehementlie. Incontinent thaireftir, the said Margaret Wallace come bak agane, and declairit that the bairne was greting at the stair-fute; and desyret hir mother to bring her vp. And thaireftir, the bairnes mother cuming to hir and taking her vp, the bairne cryis, ‘Mother, mother, ding me nocht, for thair is ane preyne⁴ raschet throw my fute!’ And the bairne, being brocht vp to the hous, grat continuallie all that nycht, and quhill⁵ the morne at that same tyme of the day. The Deponer forder declairis, that scho and the bairnes father and mother sat vp all that nycht, and walkit⁶ the bairne; and that vpone the morne thaireftir, the said Margaret Wallace come to vissit the bairne, and desyret Margaret Montgomerie, hir mothir, to send for Cristiane Grahame, making all that tyme ane grit mone⁷ for the bairnes seiknes: To quhome Margaret Montgomerie anfuerit, ‘I haif nothing ado with Cristiane Grahame, and

¹ This attack was probably a hysterical affection, or rather a kind of convulsion fit.

² Wrist.

³ Gate; wicket.

⁴ Pin.

⁵ Until.

⁶ Watched.

⁷ Moan; lamentation.

will nocht fend for hir ! ffor gif God hes laid on that feiknes on my bairne, he will, at his awin plesour, tak it af agane !' Sayis thairefter, that Margaret Wallace maid anfuer to hir, ' Gif ze knew of Cristiane Grahame skill, and quhat scho can, ze wald nocht refuse to fend for hir ; for scho can do alse mekill as God in the Heavin !' Deponis forder, that schortlie thaireftir, Margaret Wallace, by¹ the said Margaret Montgomereis knowlege, brocht the said Cristiane Grahame in to the hous, the bairne being lying as ane deid stock in the bed, and haifing gevin over greting for the tyme ; and at thair incoming, ane heip of grene webbis² being lying on the fluir, Margaret Wallace lap over the same, and cumis to the bairne, and takis hir vp out of hir bed, and settis hir on Cristiane Grahames knie ; and declairis, that eftir the bairne had sittin ane schorte space vpon the said Cristianes knie, scho grew better, and eftir that mendit.

FOR verificatioun of *the ffyft poynt*, my lord Aduocat producet certane Depositiones tane befor *the Bischope of Glesgow* ;³ with ane vther Deposition tane befor *the Commissar of Glesgow* ; as also, producet certane Depositiones tane be the said *Archebischope*, at command of the Secreit Counfall ; and thairwith produces Andro Mure, chirurgane, as Witnes ; desyring him to be fuorne, and his Deposition to be writtin.

Andro Mure, chirurgane, mareit a sevintene yeir fyne, of the age of xliij yeiris, fuorne, and purget of partiall counsell ; being inquyret, quhat he knawis concerning the ffyft Article of Dittay, red in his audience ? Depones, he knawis nothing of Margaret Mures feiknes specifeit in the said Article, except that he himself, cuming down the Brig-gait,⁴ he saw Cristiane Grahame cum furth of Marioun Mures hous ; quha thaireftir come to the deponer, and desyret him to gang in to the said Marioun : And the deponer, at hir desyre, haifing past in to the hous, at his incuming ane roistit hen was sett down on the buird ;⁵ and the deponer, with Daud Scheirar and the said Marioun Mure, sat down at the buird togidder ; and within ane schorte space thaireftir, Margaret Wallace come in to thame : Declairis, at Margaret Wallace incuming, ane guise⁶ was sett down on the buird : And the deponer, persaveing that sic intertenement wald draw him to charges, he payit his choppine of wyne and come his way, and left the rest of the cumpanie behind him. And forder knawis nocht.

FOR verificatioun of *the Saxt Article, Sevint, and Aucht Articles*, produces the Deposition of Alexander Montegomerie and vtheris, subscryuit be *my Lord of Glesgow* ; togidder with ane Testimoniall of the Minister, testifeing Mr Alexander Montgomerie his feiknes, that he was nocht able to travell, without hazard

¹ Without ; contrary to.
Archbishop of Glasgow ; who had been translated from the See of Orkney, *anno* 1610.
Bridge-gate of Glasgow.

² Webs of newly weaved, or unbleached, linen cloth.

³ James Law,

⁴ The

⁵ A roasted fowl was set upon the table.

⁶ Goose.

of his lyfe: And referris the notorietie of the pannellis guiltines of the faidis Articles to the Affyfe.

FOR preveing of *the Nynt Article of Dittay*, produces Robert Dykes, Johnne Pincartoun, Thomas Wilkyne, and Johnne Thomesone, as Witneffes, defyreing thair Depositiones to be tane, for the Affyfe better informatioun.

Robert Dykis, maltman in Ruglen, mareit, fuorne and examinat, in prefens of the Judges, Affyfouris, and pairtie, in judgement, vpone the Nynt Article, to declair the verritie, and purget of partiall counfell, Depones, that at command of vmq^{le} Allane Spens, the deponer come to Johnne Dynning, and defyret ane ficht of his elwand,¹ and, conforme to the Dittay, the ellwand was brokin; and a fyftene dayis thaireftir, or thairby, the faid Allane Spens being in Glesgow, and fleing ane fchoure,² come befor Johnne Dynningis buthe-dur,³ quhair the deponer hard Margaret Wallace, Johnne Dynningis wife, fay thir woirdis to Allane, 'Away, deboifchet knave!' Depones, the faid Allane Spens fell feik; bot knawis nocht how fone eftir thais woirdis war fpokin this feiknes fell⁴ to him. Declairis, he come in to him the tyme of his feiknes, and faw him hevelie difeasit with continuall fueitting.

Thomas Wilkyne, burges of Ruthirglene, mareit, fuorne in prefens of pairtie, Judges, and Affyfouris, in judgement, Depones, he knawis nocht Margaret Wallace, befor his cuming to Edinburgh. As to that Article of Dittay concerning Allane Spens feiknes, declairis, he was hevelie difeasit with ane fuddane and grevous feiknes, quhairof he deceiffit; bot knawis nocht quhat or quha war the cauferis thairof.

Johnne Thomesone, burges of Ruthirglene, mareit, and fuorne vpone the nynt Article of Dittay red to him in judgement, in prefens of the pairteis, Judges, and Affyfouris, is conforme to the faid Thomas Wilkyne.

Johnne Pincartoun, fuorne and demandit vpone the nynt Article, quhat he knawis thairintill? Depones, he was narrest dur nychtbour⁵ to Allane Spens, and faw Johnne Dynningis elwand brokin, at quhilk tyme the faid Johnne Dynning and Allane Spens war likelie to go by the earis for breking of the faid elwand. Declairis, that he hard Margaret Wallace, fcho being present with hir husband, fay to him, 'Go your wayis joy, let him allane,' (meaning be Allane Spens,) 'I fall tak ane amendis thairof!' Sayis he knew that Allane Spens fell in ane heavie difeas, bot knawis nocht quhat was the caus thairof.

FOR verificationn of *the Tent Article* of Dittay, my lord Aduocat vfes the aithe and declaratioun of *Alexander Boig* in Garboillis, perfewar thairof, and defyres that Article to be fuorne be him to the Affyfe, for thair better informa-

¹ Ell-wand, yard measure.

² For shelter from the shower.

³ Shop door.

⁴ Happened.

⁵ Next-door neighbour.

tioun: Quha being fuorne, declairit that he had just caus to perfew the said Article, as is fet down thairintill, aganis the pannell.

Produces also George Thomesone and James Pollok, Witnesses, desyreing thair Depositiones to be ressaunt for preving of the said tent Article of Dittay.

George Thomesone, duelland vnder Sir George Elphinstoun of Blitheswoid, kny^t, fuorne and examinat in judgement, Quhat he knawis anent the said tent Article of Dittay? Depones conforme thairto, that he hard Margaret Wallace and Alexander Boig flyteing with vther; and that scho said to him, in a grit rage and furie of mynd, that scho sould 'do to him ane evill turne,'—or sould 'gar get to him ane evill turne!' And within thre dayis thaireftir, the said Alexander his bairne fell seik, and deceifit of sueitting and vther grevous panes.

James Pollok, gairdner to Sir George Elphinstoun, fuorne and examinat vpon the said Article, Depones, he being working at the hedge within the 3aird, he hard Margaret Wallace and Alexander Boig flyteing togidder; and that in hir anger scho said to him, scho sould 'do to him ane evill turne!' And schortlie thaireftir, his bairne contractit ane seiknes, and deceifit.

My lord Aduocat takis instrumentis of the Witnes judiciall declaratioun aboue writtin; quhilk he repeitis to the Assyse, with the vther Depositiones producet be him.

THE JUSTICE and ASSESSOURIS continewis this dyet to the morne. The Assyse wairnit to be present the morne, at xj houris; ilk persone vnder the pane of iij^c merkis.

OBJECTIONS *be the Pannell to hir pretendit CONFESSIOUN, and haill Probatioun adducet.*

Mar. 22.—IT IS OBJECTIT be the pannell and hir prelocutouris aganis *hir pretendit Confessioun*, maid be hir befor the Lordis of Secreit Counsell, that the samyn can preve nathing of the haill Dittay, nor na pairt thairof. And as to that pairt of hir allegit Confessioun, quhair as scho confessit 'that scho was content, in caice it sould be provin that scho was in *Cuthbert Gregis* hous, to grant the haill Dittay!' Anfueris thairto, that is na Confessioun of the Dittay, nor of na pairt thairof; ffor the Dittay is fet down upone Witchcraft, and that the pannell practizet Witchcraft vpon the persones contenit in the Dittay, be Sorcerie and Inchantment; scho hes nocht confessit the samyn be hir Deposition, nor na pairt thairof; sua that hir Deposition can be na probatioun of Witchcraft, nor of practizing thairof; bot only, that gif it fall be provin aganis hir, hir being in Gregis hous, quhilk scho hes denyit, scho hes thairin committit onlie a lie, and being perfewit and provin, is content to vnderly the pwneischment appointit aganis Leafing-makeris. *Secundo*, be the Confessioun contenit in hir

Deposition befor the Counsell, scho is only content, gif that haill Article be provin aganis hir, than to confes all the rest to be trew; bot albeit it be provin that scho was in the hous, it is nocht confessit thairby that scho was ane Witche. *Tertio*, it is nawayis provin be the Deposition producet, that scho was within the hous, becaus thair is only ane woman producet as a Witnes to verifie the same. It is forder allegit, that thair can be na probatioun vpone that hir Confessioun maid befor the Counsell, becaus the samyn is na poynt of Dittay.

It is anfuerit be the persewaris, as to the obiectioun maid against the Deposition maid be the pannell befor the Counsell, that obiectioun aucht nocht to be respectit, in respect of the Judicial Confessioun maid befor the Lordis of Counsell, quhilk bindis hir; be the quhilk it is manifest, that scho hes denyit the treuth, in respect of the probatioun led be dyuerse of the Witneses producet, verifeing hir to haif bene in Gregis hous the tyme of his seiknes, quhilk the persewaris referris to the Inqueistis knowlege and Witnes Deposition. And desyres it may be rememberit to the Assyse, quhat sentence was gevin aganis *Patrik Cheyne*, vpone the lyk Deposition.

It is forder allegit be the pannell, that the Deposition maid befor my Lord of Glesgow, the samyn can mak na fayth, in respect his Lordschip had na warrant to that effect.—It is anfuerit be the persewaris to that obiectioun, that the samyn aucht to be repellit, in respect of my Lord of Glesgowis Judicial Declaration maid be his Lordschip, that he had ane special Letter direct to him be the Lordis of Secreit Counsell, for taking of the saidis Depositiones, and of the article subioynet to hir Depositiones subscriuit be the Clerk of Counsell.

It is allegit be the pannell, that nather the first nor secund Deposition of *Cristiane Grahame* can be respectit: *ffirst*, becaus it is nather hir principall Deposition, nor Extract thair of; nocht the principall, becaus it is nocht subscriuit be hir, nocht the Extract, becaus nocht (subscriuit) be ane Clerk of Court: *Secundo*, can preve nathing, becaus it is maid, scho nocht being suorne to that effect: *Tertio*, it is maid be the pairtie being absent aganis quhome it is deponit, quha, gif scho had bene requyret, wald haif compeirit, and offerit to haif bene confrontit with hir; quha, gif scho had bene confrontit, wald haif denyit the samyn: Lyk as, scho cum of set purpois to the Tolbuth, befor hir Conviction, and offerit hir selff to haif bene confrontit, quhilk was denyit. *Last*, hir Deposition can work nathing aganis the pannell, being ane condampnet persone; and the Deposition aucht nawayis to be respectit, except it war instantlie verifeit be the proces, that befor the making of the said Deposition, or the tyme of the making thair of, that the said Cristian Grahame had confessit the haill poyntis of Dittay than laid to hir charge: ffor as the woirdis ar confauet, thay ar spokin be compariesone, that eftir scho had denyit the poyntis of Dittay laid to hir

charge, and declairit hir self to be altogidder innocent thair of, and the pannell being at that tyme ane honest woman, sua repute and haldin, scho sayis, 'scho was als frie of Witchcraft as scho or ony vther in the toun!' Forder, the Confessioun can nocht be respectit, becaus it is nocht maid befor ane Judge haifing power to tak her Confessioun, thair being na Commissioun producet for taking of the said Confessioun. Nixt, the Deposition beiris nocht that scho was ony wayis interrogat or speirit¹ at, and is nocht maid in judgement, becaus the Assyse was than incloset, being than hir Judges. Last, it beiris nocht that this pannell was airt or pairt of ony Sorcerie, bot of sic deidis as scho did, and confessit to haif done: And referris to the Assyse, hir Confessioun, that scho was innocent of all. And as to the worstettis,² thay ar na pairt of Witchcraft, be reveing³ or drawing thame furth of hir purse.

It is ansuerit thairto be the persewaris, that the obiectiones maid aganis the tua Depositiones producet is nawayis relevant, and is nocht to be respectit be the Assyse, becaus the samyn is subscryuit be *my Lord Archbischope of Glesgow*, as Lord of the Regalitie, and quha was present the haill tyme of Cristiane Grahames tryell, nocht onlie as Lord of the said Regalitie, bot also as being ane of the Lordis of his Maiesteis Previe Counfall; and thairby, be vertew of his office and authoritie, haifing sufficient power to tak cognitioun of quhatsumeuir ryote or offence committit to ony of his Maiesteis subiectis, be quhatsumeuir maner of way, within that pairt of his dyocie,⁴ or ony pairt of the kingdome. *Igitur, &c.* —To the quhilk it is ansuerit be the pannell, that the Deposition was nocht subscryuit be *my Lord of Kilsythe*, to quhome the Commissioun was grantit, bot is allanerlie subscryuit be the Proueist and Bailleis of Glesgow, quha ar pairteis: Lyk as presentlie, at the dyteing heirof, Gabriell Cunninghame, standing at the bar, hes professit him selff to be a pairtie and informer to my lord Aduocat. Last, her Deposition can nocht be respectit, becaus scho alleges hir selff to be participant of the same cryme; and sa hir Deposition, of the Law, can mak na fayth, except scho had confessit scho had maid hir Deposition or Confessioun eftir tortour.

To the quhilk it is ansuerit be the persewaris, that the saidis Depositiones ar subscryuit be the Proveist and Bailleis of Glasgou, quha war a pairt of the Commissioneris nominat and appointit to the tryell of the said Cristiane Grahame, as also subscryuit be vther tua men of grit credeit, viz. Mr Johnne Bell and Mr Robert Scott, Ministeris of Glasgou, quhais subscriptiones ar sufficient to geve authoritie to the Depositiones, as evir has bene fund in this judgement, in all matteris of Witchcraft, and speciallie, in the proces of *Euphame Macalzeane*, *Barbara Naper*, and *Agnes Sampson*. The last pairt aucht nocht to be

¹ Enquired. ² The coloured worsted threads formerly noticed. ³ Stealing. ⁴ Diocese.

respectit, in respect *socij criminis* ar reffaut and admittit in all crymes of Tressone, Erracie,¹ and Witchecraft.

Quhairvnto the pannell and hir prelocutouris anfueris to thais tua memberis of my lord Aduocattis anfueris, that the tua Ministeris befoir quhome Cristiane Grahame hir Deposition was maid, that thai war honest men, it is nocht denyit; bot it followis nocht, becaus thay are honest men, thairfoir thay had power to tak hir Deposition, in ane matter concerning hir lyfe, without Commiffioun. For anfuer to the proces allegit aganis *Euphame M^ccalzeane, Barbara Naper, &c.*, agreis thairto, in regaird thay war examinat be Mr James Carmichell, to quhome speciall Commiffioun was gevin for that effect. Laft, it is declairit be the pannell, that evin in the cryme of Erracie or Lese-maiestie, a pairtner of ane cryme² is nocht to be credited without tortour; and repeittis the tortouring of *Sprote* in Tressone, becaus he was partiner of the Tressone.

It is objectit be the pannell and hir prelocutouris, aganis the Deposition maid be *Margaret Grahame*, dochter to Cristiane Grahame, befoir the Commiffar of Glesgow, it can nocht be respectit; ffirft, becaus it is not maid judiciallie, befoir ane Judge haifing power to that effect: *Secundo*, befoir ane Commiffar, without ane Commiffioun, quha had na power in matteris of Witchcraft, and vtheris concerning lyfe and daithe: *Tertio*, was nocht requyret Witnes befoir ane Judge haifing Commiffioun, nor fworne to that effect: *Quarto*, hir Deposition can nocht be respectit, in respect of hir age, scho nocht being past xvij³ yeiris: *Quinto*, in all hir Depositiones, nevir a word deponet that scho knew Margaret Wallace to be ane Witche, or a practizer of Witchecraft; bot only that hir mother and scho past to the zaird togidder, tynt hir pantoun, quhilk was put one agane be Cristiane Grahame, &c.: *And* quhair, it is affirmet in the Deposition, that scho tuik ane schooe, and pat in sum seidis thairin, that is nocht lybellit, and can nocht be respectit, becaus nathing followit thairupoun: *Last*, na Deposition can be respectit at all, of ony persone, as Witnes, bot only sic as ar producet in Judgement,⁴ to the effect the pannell may object aganis thame, quhidder thay may depone aganis hir or nocht. And thairfoir, of all Law, it is inviolablie obseruet, that na faith is gevin to Testimoniallis, bot as Witnes, in a matter of fourtie schillingis.

It is anfuerit be the persewar, as to the allegiance and objection aganis *Margaret Grahame*, the samyn aucht to be repellit, it being tane befoir ane Judge-Ordiner, judiciallie, viz. the Commiffar of Glesgow: And as to hir age, scho hes deponet scho is past xiiij yeiris, quhilk is referrit to the Assyse knowlege; and that than scho mycht haif mareit lauchfullie, mekill mair to beir witneffing in

¹ Heresy.² *Particeps criminis*.³ *Sic*; xiiij?⁴ This is the first time that this objection is recorded as having been started by the Counsel for the pannel.

obscure factis, sic as ony thing concerning vmq^{le} Cristiane Grahame and Margaret Wallace, quhais companie scho resoirtit daylie. And forder, the persewar referris to the Assyse knowlege, quhat thay knaw of hir Depositione; and speciallie, gif it was grantit befor my Lord of Glesgow, the pannell hir selff, and sum of the Inqueist: And forder, producet the dome and sentence of convictioun to the Assyse, quhair the Proveist and Bailleis of Glesgow war Commiffioneris appointit and set for tryell of Cristiane Grahame, and sa had power to ressaue Cristiane Grahames ayth, for haifing Commiffioun thairto.

It is anfuerit be the pannell, as to that pairt of the anfuer anent Margaret Grahames age, the Deposition producet beiris na sic thing.—My lord Aduocat, for anfuer thairto, declairis, he produces ane vther Deposition of hiris of the same dait, beiring hir former age: Quhilk is referrit to the Assyse.

Item, the pannell anfueris to that poynt, anent the production of Cristiane Grahames Sentence of Convictioun, that the pannell acceptis the same; and protestis that the persewaris repetitioun thairto, for instructing of the Assyse, anent that alledgeance proponit be the pannell, that Cristiane Grahames Deposition, beiring Margaret Wallace to be airt and pairt of all confest be hir to haif done, preves nawayis hir to be giltie of Witchcraft; becaus the convictioun producet, beiris hir to haif denyit all the poyntis of the lybell anent Witchcraft; and scho confesses that scho was pairt-taker of sic thingis as scho confesses hir selff to haif done, it man (*must*) be of na deidis impoirting Witchcraft.—The last objection proponit be the pannell is nocht to be respectit, in respect of Cristiane Grahames Confessioun and convictioun producet; quhairin scho is convict of tua poyntis, conforme to hir awin Confessioun, viz. the secund and fourt poyntis of Dittay quhairupone scho was indytit.—It is anfuerit be the pannell, that the said convictioun proceidis vpone the admitting of the haill Articles thairto to the knowlege of ane Assyse, sua that the finding of hir giltie of ony of the Articles is nocht the grund of the sentence of Convictioun; ffor thais tua Articles, a pairt quhairto scho is convict, was nocht relevant without the haill Articles had bene admittit; and forder, thir tua poyntis quhairto Grahame is convict, is na poynt of our Dittay.

It is objectit be the pannell aganis *Marioun Mures* Deposition, subscryuit be my Lord of Glesgow, the samyn can nocht be respectit, for the reffones foir-faidis; with this additioun, that gif the said Marioun Mure war now producet as Witnes at the bar, scho wald be repellit; for this reffone, becaus be the Deposition it is confest that scho is father-sister to the bairne quha is alleget to haif bene bewitchet or curet be the pannell, as being within degreis-defending to the said bairne mentionet in the Dittay. And forder, it is objectit, that scho had gevin partiall counfall in the caus, quhilk defens is tane fra us be production of

ane Testimoniall, and nocht hir selff. And repeittis all the rest of the objectiones aganis the vther Testimoniall.—The last objection aucht to be repellit, in respect of the Deposition of *Marioun Mure*, tane be my Lord of Glesgow, quha had Commissioun of the Counsell, as he hes deponit, and is testifeit be James Prymrois, clerk of the Counsell. Lyk as, the samyn Deposition is subscryuit be the Laird of Mynto, and the Proveist and Bailleis of Glesgow, Commissiouneris for Tryell of the said Cristiane Grahame: And as to the objection, that scho was within degreis-defending to the bairne, it is anfuerit directlie, that Commissioun be the Counsell for hir examinatioun, the pannell being present, and nathing objectit be pannell in the contrair, is sufficient to elyd¹ that pairt of the said objection.

It is objectit be the pannell aganis the Deposition of *Mr Alexander Montgomerie* producet, that the samyn can mak na fayth, it nocht being maid befor ane Judge, nor he fuorne to that effect; nor nane inquyreing sic thing of him: And speciallie, aucht to haif bene summond befor ane Judge-Ordiner, and to haif deponit judiciallie; in respect that letteris war direct, summonding him to compeir befor the Justice in this judgement, and hes nocht compeirit, being summond to that effect; and speciallie, his Deposition could nocht haif bene ressaueit gif he had compeirit, becaus it wald haif bene objectit contrair him, that he and Margaret Montgomerie are brother-bairnes of the hous of Hefil-heid,² quhais dochter is allegit to haif bene witchet, be ane speciall poynt of Dittay gevin in aganis this pannell; and sa, his extra-judiciall Confessioun out of all judgement, subscryuet be him without Witnes, could nocht be respectit.—To the quhilk the persewaris anfueris, that this last objection aucht to be repellit, in respect of the Testimoniall producet, beiring Mr Alexander to be seik, subscryuit be ane Minister, quhilk excuises his absence: Quhilk Deposition is referrit to the tryell of the Assyse.

IN respect of the quhilkis Depositiones and Verificationes producet to the persones of Inqueist, for thair forder informatioun of the pannellis guiltines of the perticular poyntis of Dittay aboue written, Protestis for Wilfull Errour aganis thame, gif thay acquit.

VERDICT. The Assyse, for the maist pairt, FYLES *Margaret Wallace* of the *first* Article of Dittay,³ anent Cuthbert Greg, couper, and haill circumstances thair of: AND siclyk, all in ane voce, ffyles hir of the *fourth* poynt of Dittay, and haill circumstances mentionet thairintill, anent the consulting with vmq^{le} Cris-

¹ Cut off, &c. Lat. *elidere*.

² The Montgomeries of Hazelhead, a respectable family in Ayrshire.

³ The Articles of Dittay of which the pannel is found guilty, are rehearsed at length at the commencement of the Trial, being the only part of the Dittay preserved at full length in the Record. The remainder of the points are pretty largely recapitulated in the preceding arguments, which are of great importance, as they completely illustrate the state of the Law and practice on this extraordinary subject. More freedom of discussion was permitted in this Trial, than in any of the previous cases of a similar nature.

tiane Grahame, ane notorious Witche, for cureing of hir felff of ane suddane difeafe, be taking the famyn of hir, and laying it vpon Alexander Vallange bairne; and thaireftir cureing the faid bairne of the faid difeafe, in forme and maner fpecifeit in the Dittay: AND lykwayis, for the maift pairt,¹ ffyles hir of the *fyft* poynt, anent the cureing of Margaret Mure of the feiknes quhairwith fcho was viffeit, be Sorcerie and Witchecraft, and confulting with Cristiane Grahame for that effect, in maner contenit in the faid *fyft* Article: AND in lyk maner, all in ane voce, ffyles hir of the *tent* Article of Dittay, and haill circumftances thair of, anent the feiknes laid vpon Alexander Boig his bairne, be Sorcerie and Witchcraft, in maner fpecifeit in that Article: AND laft, all in ane voce, ffyles hir of the generall poynt, as ane cownoun confulter with Witches, thir aucht or nyne yeiris, namelie with vmq^{le} Cristiane Grahame, laitlie convict and brunt for ane notorious Witche, and with Katharene Blair, and vther Witches, and feiken² of help and refponffis of thame, alswell for cureing of hir felff of dyuerfe feikneffes, and cureing of hir ffreindis and acquaintance, as for inflicting of dyuerfe crewall difeiffis vpon dyuerfe perfones to quhome fcho buir ony haitrent; and diftructione of thame thairby, be devillrie, Incantatioun, and Witchcraft, expreflie forbidden be the Lawis of Almychtie God, and municipall Lawis of this realme. AND CLANGES hir of the haill remanent poyntis of Dittay, and crymes thairin contenit.³

SENTENCE. The Juftice, be the mouth of James M^ccairtour,⁴ dempfter of Court, Ordanit the faid Margaret Wallace to be tane to the Caftell-hill of Ed^r, and thair to be wirreit⁵ at ane ftaik to the deid; and hir body thaireftir to be brunt in afches: And all hir moveabill guidis to be efcheit, &c.

Slaughter.

Mar. 27.—MR JOHNNE STEWART of Dowellie, and Thomas Stewart, his brother.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Low in Gairnetullie; committit vpon the xvij of Januar, 1614 yeiris.

PERSEWARIS, James Low, as brother; Andro Low, burges of Perthe, neir kynfman; Sir W. Oliphant.

PRELOCUTOURIS in defence, Mr Lueis Stewart, Mr Robert Lermonth.

It is allegit that this matter can nocht pas to ane Affyse, in respect thai haif obtenit his Maiefties Remiffioun, vnder his hienes Greit Seil, quhilk thay vfe and produce, daitit the xxiiij day of Marche, 1618 yeiris.—The Juftice ordanis the pannell to find caution to fatisfie the pairties; quha, togidder with James Soutter of the Mylnetoun of Fornocht, band and obleift thame, &c.

¹ 'By a plurality of voices,' as it was more recently expressed.
Lawfoune, chancellor.

⁴ Who appears for the first time in this office.

² Seeking.

³ 'Johnne

⁵ Strangled.

**Intercommuning with the MacGregors—Slaughter—Theft—
Fire-raising, &c.**

Apr. 23.—JOHNNE MOIR M^cEANE CHERE¹ CHAMRONE (Cameron), and
Duncane (Moir) M^ceane Chamrone, his brother.

Dilaitit of the crymes following, viz. The said *Johnne Moir*, ffor being in cumpanie with vmq^{le} Allaster M^cGregour of Glenstra, Johnne Dow M^cGregour, his brother, and vtheris thair kyn and freindis, togidder with the Clan-Chamrone and Clan-Anveroch, and vtheris brokin men and foirneris, to the number of ffoure hundreth perfones, convocat in battell array, vpone the landis of *Glenfrune*,² pertening to the Laird of Lufe,³ in ffebruar, 1603 yeiris; quhair vmquhile Alexander Colquhoun of Lufe, accompaneit with certane his freindis, war convenit, at that tyme, be vertew of oure fouerane lordis Commiffioun, to refist the faidis M^cGREGOURIS cruell interpryfes and intentiones. AND for airt and pairt of the fteilling and away-taking of fex hundreth ky and oxin, aucht hundreth fcheip and gait, fourtene fcoir horfe and meiris, with the haill pleniffing, guidis and geir of the four-pund-land of Lufe, pertening to the inhabitantis thairof. AND ficlyk, the said *Duncane Moir M^ceane Chamrone*, ffor being in companie with Robert Abroche,⁴ Johnne Dow M^callaster,⁵ and vtheris thair complices, ane aucht yeir fyne, or thairby,⁶ at the Slauchter of vmq^{le} James Menzies, brother to the Barrone of Comerie, and Burning of his hous;⁷ and fa was airt and pairt of the faid flauchter, and burning of the faid hous. TO THE TAIKIN,⁸ he hes confeffit that he paid thre hundreth merkis to the Barrone of Comerie and his freindis, in Affythement⁹ of the Slauchter and Burning; as at lenth is contenit in the Dittay.¹⁰

PERSEWAR, Sir Williame Oliphant; Johnne Colquhoun, indueller in Leyth, as informer.

The perfones on pannell, being enterit, declairit that nane of the freindis of the Barone of Comerie could perfew thame for the Slauchter of James Menzeis; becaus thai had reffaut fatisfactioun for the Slauchter and Burning, fra Duncane. And the said Johnne Moir confeffit his being at the ffeild of Glenfrune, bot denyis that he did ony fskayth thairat.

¹ John 'the large,' the son of John of 'the mouse colour.' ² See this Collection, II. 430, for an account of the Battle of Glenfruin, &c. ³ Luss, on the banks of Loch-Lomond. ⁴ M^cGregor. Named *Abroche* after his father Duncane, viz, 'of Lochaber.' ⁵ It appears from the Records of the Privy Council, that he was killed in February, 1611. ⁶ Robert Abroche received the Royal pardon, previous to December, 1612.

⁷ As the Menzieses were both interested and most zealously active in furthering the cruel persecutions directed against the Clan-Gregor, so they were particularly obnoxious to the vengeance of that Clan. ⁸ In testimony or *token* whereof.

⁹ That compensation shall thee nought avail,
Which erst necessity, not Justice gave;
Howe'er in others it be held sustainable—
But shall be quoted as sound proof of guilt,
And practical confession of thy crime.

Anon.

¹⁰ The Dittay is not preserved on record.

The Justice Ordanis the Dittay to pas to the knowlege of ane Assyse, &c.

ASSISA.

Johnne Naper of Kilmahew,	George Nicoll, cuik in Edr,	Vmphra Colquhoune, indueller in
Johnne Darleith of that Ilk,	James Mitchell in Chapeloun,	the Cannogait,
Johnne Danielfoun of Dal-	Johnne Williamfoun, thair,	Williame Buchannane, thair,
quherne,	Williame Gow in Drymmene,	Adame Clerk, litster in Edinburgh,
Mungo Buchannane in Tillie-	Robert Moriefoun, burges of	Patrik Colquhoun, alias Cowane,
chevin,	Dumbartane,	tailzeour in Edinburgh,
W ^m Buntene in Auchinfoule,		George Mitchel, staibler thair.

VERDICT. The Assyse, all in ane voce, fand, pronuncet, and declairit the saidis Johnne and Duncane to be ffylet, culpable, and convict of the crymes *respectiue* aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edr, and thair, thair heidis to be fstrukin fra thair bodeyis; and thair guidis to be efcheit and inbrocht to his Maiesteis vse, &c.

Suborning of Witnesses—Perjury.

Jun. 22.—ANDRO TRUMBLE in Belsches, Robert Ker in Bewlie, James Young in Belsches, and David Trumble in Lufruthir.

Dilaitit of Suborning of Witnesses, and for beiring of ffalse-witneffing.

My lord Aduocat producet the Dittay, with ane Warrant direct to the Justice be the Lordis of Seffioun, for putting the pannell to the tryell of ane Assyse, for the crymes specifeit in thair Dittay.¹

ASSISA.

Gilbert Ker of Lochtour, Williame Ker of Lyntoun, Johnne Glendonyng of Drumrasche, George Kincaid, mercheand in Edinburgh, Mr Thomas Ker, sone to the Guidman of Yair.²

My lord Aduocat takis instrumentis of the fueiring of the Assyse; and for verificatioun of the Dittay, producet the Depositiones maid in presens of the Lordis of Seffioun, subscryuit be my Lord of Melrois,³ *in presentia Dominorum*; And also, producet ane Decreit of the saidis Lordis, vnder the subscription of Mr Thomas Hay, clerk, daitit the xxij of Junij instant, ffinding and declairing the said Andro Trumble to be a periured and ffals man, and ane corrupter and seducer of Witnesses to depone ffalslie; and also, ffinding the saidis Robert Ker, James Young, and David Trumble, Witnesses foirsaidis, seducet be the said Andro, to be in lyk maner perjuret and ffalse Witnesses; in respect, thay first declairit be thair solemne aithes, that thai war nawayis seducet, be the said Andro Trumble, to beir ffals witnes in his cause of Spuilzie, persewit be him aganis Williame and Walter Mydilmestis; and thaireftir, being mair straitlie and narrowlie examinat, confessit the verritie of the said seduction, and the ffalsset of thair Depositiones. And vpone the production thairof, askit instrumentis, and

¹ The Dittays are so extremely prolix and uninteresting, that it has not been deemed necessary to insert them here. ² The rest burgesses. ³ Sir Thomas Hamilton of Binning, &c. afterwards Earl of Haddington, Lord President of the College of Justice, &c. one of the greatest men of his time.

protestit for Wilfull Errour aganis the saidis persones of Assyse, gif thay acquit ; speciallie, in respect of the pannellis offering thame in his Maiesteis will for the said crymes.

VERDICT. The Assyse, all in ane voce, be the repourt of Nicoll Edger, mercheand burges of Edinburghe, Chancellor, ffand, pronuncet, and declairit the saidis Andro, Robert, James and Daid, to be ffylet, culpable, and convict.—

SENTENCE. The saidis *Andro Trumble*, *Robert Ker*, and *James Young*, to be tane to the Castell-hill of Edinburgh, and thair to be Hangit quhill thai be deid ; and thair haill moveabill guidis to be escheit to his Maiesteis vse.—And the said *David Trumble* to be tane to the Mercat-croce of Edinburghe, and thair his tounge to be pearcet with ane hett boitkyn ; and thaireftir Banischet this realme, and nocht (thaireftir) to be fund thairintill, vnder the pane of deid.

Assisors fined for being absent.

SIR WILLIAME McDUGALL of Mc Cairstoun, Sir Johnne Scott of Newburgh, Raulf Ker, bailzie of Lauder, Sir Robert Scott of Thirlstane, Williame Johnnestoun of Lockerbie, Williame Borthuik, elder of Johnnstoun-burne, Sir Archibald Murray of Blakbarrony, Mr Johnne Home of Swanscheill, James Fairbairne of West Gordoune, Johnne Elphinstoun of Schank, Alexander Cranstoun of Moriestoun, Johnne Cranstoun of Thornydykis, Sir Robert Scott of Hayneing, David Vause of Blause, Williame Home of Hardeismylne, Williame Bennet, seruitour to the Erle of Roxburgh, Johnne Symontoun, younger, of that ilk, Gilbert Ellote of Stobis, Robert Logane, ffiear of Bonnytoun, Mr Johnne Ker, clerk of Selkirk, Adame Gairdin, mercheand,—and twelve others, mercheands,—‘ ilk ane of thame, for thair nocht compeirance, to pas vpone the said Assyse, war vnlawit in the pane of ane hundreth merkis.’

Taking captiue—Scourging—Slaughter, &c.

JUN. 26.—SIR WILLIAME KEYTH of Ludquhairne, kny^t, and Hew Charteris, his seruant.

Dilaitit for allegit airt and pairt of the Taking and Apprehending of Alexander Pedder, myller at the mylne of Feachfeild, vnder nycht, furth of his duelling hous, mother-naikit as he was borne ; and for cayreing him, as ane captiue and prissoner, to the Place of Feachfeild, and breking vp of the zettis and durris of the said place ; scourging him with fuord-beltis and horse-brydillis vp and doun the hall thairof, to the effusioun of his bluid. AND siclyk, for allegit airt and pairt of the daith and Slaughter of vmq^{le} Andro Fraiser, ane young infant bairne, sone to Andro Fraiser, younger of Mukallis : AND for contraveining the Actis of Parliament, in beiring and weiring of hagbutis and pistolettis PERSEWARIS, Andro Fraiser, younger of Mukallis, as father ; Alexander Pedder, myller ; Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord, for his hienes entreis.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Roger Mowat.

Compeirit the said Sir Williame and his seruant, togidder with the said prelocutouris, and exponet and declairit, that thai war informet, Criminall Letteris

war direct out aganis thame, vpone threscoir dayis wairning, at the instance of Andro Frafer, &c. chargeing thame and certane vtheris¹ to find caution for thair personall compeirance this day and place, in the hour of caus, to vnderly the law for the above allegit crymes: For obedience of the quhilk charge of Hoirning, and tryell of thair innocencie of the saidis allegit crymes, the said Sir Williame Keyth, and Hew Chairteris, compeirit and offerit thame selffis of the Law, as altogidder innocent thairof. And in respect na pairtie compeiris to infist in thair perfute, being oft tymes callit to that effect, protestit for thair cautioneris relief, and that thai, na nane of thame on nawayis fould be callit or perfewit for the saidis allegit crymes, in ony tyme cuming; and thairupoun askit instrumentis.

Johnne Forbes, eldest sone and appeirand air to Mr Duncane Forbes of Bannagask, as cautioner and fouertie, for repoirting the above Letteris, deulie execute and indorsate, and perfute thairof, &c., vnlawit vnder the panes following, viz. vpone the said Sir Williame Keyth, and Nathaniell Keyth of Coklaw, ilk ane of thame vnder the pane of v^c merkis; and vpone ilk ane of the remanent defenderis, in the pane of ane hundreth merkis.

House-breaking—Theft.

Jul. 3.—ANDRO RUTHERFURD, sumtyme servand to Mr James M^cGill of Cranstoun.

Dilaitit of airt and pairt of the breking of the said Mr James M^cgillis Place of Cranstoun, and breking vp of ane kift,² within the Woman-hous³ thairof, pertening to Malie Newlandis, and steilling xxx li. furth thairof; committit in Maij last.

The pannell offerit him selff in the Kingis Maiestie and the Laird of Cranstones will, for the said cryme: Quhairvpone, the Justice ordanit him, of his awin consent, to be Banischet the parochin of Cranstoune; and at na tyme heirefter to be fund thairintill, vnder the pane of deid. And ordanit him to find caution for his compeirance vpone fyftene dayis wairning, to vnderly the law for the said cryme, gif in ony tyme cuming he beis fund within the said parochin; quha fund Thomas Rutherford in Borthiuk-manes caution for that effect.

Fire-raising—Slaughter.

Jul. 24.—DONALD M^cANGUS of Glengarie.

¹ There were 'Nathaniell Keyth of Coklaw, Williame Keyth, sone to Alex. Keyth of Bodome, Robert Marfchell, Gilbert Wairdene, Gilbert Huchoun, and Alexander Forbes, all seruitouris to the said Sir Williame; Johnne Keyth, sone to Alex. Keyth, vnclie to the said Sir Williame, George Keyth, callit *Caithnes*, George Johnne Dow M^cfarlane, Alexander Fordyce, and Thomas Murray, seruitouris to the said Nathaniell Keyth, vnclie to the said Sir Williame.' ² Chest. ³ Probably that part of the Offices of Cranstoun, where the female domestics resided.

Dilaitit of th treffonable Raifing of ffyre, Burning of xxvij Houffes, with the inficht being thairin, pertening to Mr Johnne M^cKenzie, Archedeane of Rofs; and Slauchter of dyuerfe his tennentis.

PERSEWAR, Mr Johnne M^cKenzie, Archedene of Rofs.

The perfewar passis fra the pannellis persute *pro loco et tempore*, for the crymes contenit in the Letteris.

The pannell offeris him selff to the tryell of the law for the saidis crymes, as altogidder innocent; and disassentis to the said continuatioun. And for obedience of the Justice ordinance, ffand Sir Donald Gorme of Slait, kny^t, personallie present, cautione for his entrie, to the effect foirsaid.

Resetting of a Jesuit-Priest.

Aug. 6.—ANDRO HATHOWIE, burges of Glesgow, and Jonet Pollok, his spous.

Dilaitit of the treffonabill Recept of George Mortimer, ane Jesuite Preist, &c.¹

VERDICT. The Assyse, be pluralitie of voittis, be the repourt and declaratioun of George Moore of Powmadie, chancellor, ffand the saidis Andro and Jonet to be ffylet, culpable, and convict, &c.—SENTENCE. The Justice, conforme to ane Warrant of the Lordis of his Maiesteis Secreit Counfall, decernis and ordanis the saidis *Andro* and *Jonet* to be Banischet furth of this kingdome of Scotland, during all the dayis of thair lyftymes: And to be committit to waird, thairin to remane, quhill caution be fund to the Proveist and Bailleis of Glesgow, for obedience of the said dome, and thair nocht returning agane; vnder sic panes, as fall be set down be the saidis Proveist and Bailleis, in thair Act to be maid thairupoun.

[*Mr Robert Fairlie, Justice-Depute.*]

Theft.

Sep. 20.—HENRIE KYNLOCHE, fumtyme post-maister, indueller in the Cannogait.

Dilaitit of the thiftious steilling of ane blak cloik, lynet throw with blak veluet, ane grograne taffitie cloik, lynet with figuret satene, and tua pair filk schankis, pertening to Alexander Lord of Kildrymmie, furth of his Place, at the bak of the Palice of Halyruidhous; committit in November 1621 lastbypast.

The pannell confessis the cryme specifeit in his Dittay, with all humilitie: Seing the guidis stowin ar restorit to the rychteous owner thairof, offeris him selff in the Kingis Maiestie and his hienes Counfellis will, for the said cryme.

WARRANT of the Lordis of Secreit Counfall.

APUD HALYRUDHOUS, *decimo quinto mensis Maij*, 1622. FORSAMEKILL AS Henrie Kinloche, fumtyme post-maister in the Cannogait, being tane and put in waird, within the Tolbuthe of the Canno-

¹ The Dittay, which is recorded at length, is similar to those already reported.

gait, quhairin he presentlie remanis, ffor certane poyntis of Thift committit be him: Off the quhilkis, neceffar it is that he be tryed, and that some pwneischment be inflictit vpon him, to the terrour of vtheris to offend in the lyk heireftir. Thairfoir, the Lordis of Secreit Counfall Ordanis his Maieftis Justice, Justice-clark, and thair deputis, to appoint ane Justice Court to be haldin in the Tolbuthe of Edinburghe, at fuche ane day as thay fall think expedient; and to caus the said Henrie to be exhibeit and producet befor thame; and thair to accuse him of the said cryme of Thift, according to the per-ticuler Dittay, that fall be gevin in aganis him. And Ordanis his Maieftis Aduocat to infist in the perfute of him; and gif the said Henrie fall confes the said cryme, and become in his Maieftis will for the fame, that than thay pronunce dome and sentence aganis him, ordaning him to be Banist the realmes of Scotland and England, and nevir to returne agane within the samyn during his lyfthyme, vnder the pane of deid.

Extractum, &c.

JACOBUS PRYMROIS.

SENTENCE was pronounced in conformity to this Warrant.

'Rapt and Ravishing'—(Forcible Abduction)—Adultery.

[THE following brief notice of an ancient *Crim. con.* Case, affords a specimen of the mode in which affairs of gallantry were managed in the Western Islands and Highlands of Scotland. Sir LAUCHLAN M^cFINGANE (MACKINNON) of Strathardill, having fallen in fancy with *Mary M^cConnell* (*MacDonald*), the wife of *Ranald of Benbecula*, makes the best use of his winning arts, and carries off the lady, by violence, from her husband. It would appear, from the charge of Adultery being also preferred against this knight errant, that the consent of the lady had in all probability been previously obtained to the arrangement. *Ranald M^cAllan V^cEan*, the injured husband, was brother to *Donald M^cAllan M^cEan*, CAPTAIN OF CLANRANALD, and grandfather of *Donald MacDonald of Benbecula*, who became Captain of Clanranald, anno 1725. This gay and *captivating* deceiver, Sir Lauchlan, was one of several Hebridian Chiefs, who had been knighted by KING JAMES VI, in the latter part of his reign, to ensure their more ready acquiescence in the schemes so zealously projected by him, for the civilization of their semi-barbarous tribes. A Gift of his Escheat was granted by the King, Dec. 12, 1622.¹

The Editor begs to refer the reader to the forthcoming work of Mr GREGORY, already alluded to, for more copious illustrations of matters connected with the Hebrides and West Highlands.]

Nov. 8.—SIR LAUCLANE M^cFINGANE of Strathardill, kny^t.

Dilaitit of the Rapt and Raveifcheing of Marie M^cconneill, fister to Sir Donald M^cconneill of Slait, and spouse to Rannald M^callane V^ceane of Castelwirrie;² committing Adulterie with hir, and remanent crymes contenit in the Letteris.

James Logie, wryter, producet the Letteris deulie execute, indorfate, and regiftrat; quhairby the said Sir Lauchlane is denuncet rebell, and put to the horne, for nocht finding of caution, to haif compeirit to haif vnderlyne the law.

Slaughter.

Mar. 12, 1623.—WILLIAME OLIPHANT of Gask, and Alexander Flemyng of Monnefs.³

Dilaitit of airt and pairt of the Slauchter of vmquhile David Toscheoch of Monyvaird.⁴

¹ See Record of the *Privy Seal* and *History of the Macdonalds*.
Oliphant of Rescobie, and Johnne Erle of Wigtoun, cautioners for the pannels' entry.
29, 1618, &c.

² Castletirrim.

³ Peter

⁴ See Jul.

Compeirit Mr James Campbell, sone to the Laird of Laweris, for him selff, and in name and behalf of the remanent kyn and freindis¹ of the said vmq^{le} Daud, and in name of Annas Grahame, Lady Monyvaird, and past fra the said Williame Oliphant of Gask his persute, *pro loco et tempore*.

Compeirit personallie, Mr Johnne Oliphant, as procuratour for Williame Oliphant of Gask, and producet ane Warrant and delyuerance of the Lordis of Secreit Counsall, commanding the Justice to desert the dyet appointit this day for the said Williame Oliphant; quhairof the tennour followis.

WARRANT of the Secreit Counsell, concerning Williame Oliphant of Gask, for Monyvairdis Slauchter.

MY LORDIS OF SECREIT COUNSALL, vnto your ll.² humble meanis and schawis, I, your seruitour, Williame Oliphant of Gask; That quhair, I am charget to compeir befor his Maiesteis Justice, in the Tolbuth of Edinburghe, vpon the xij day of Marche instant, to vnderly the Law for the Slauchter of vmq^{le} David Toscheoche of Monyvaird, and vtheris crymes specifeit in the Letteris raised thair-upoun. Lyk as, the Justice intendis to proceed aganis me in that matter, albeit it be of verritie that HIS MAIESTIE, being treulie informet of the forme and maner how that vnhappie Slauchter fell out, and how that dyuerse come to the fray quho war bothe ignorant and innocent of the Slauchter, and wald haif bene lothe to haif bene actoris thairin, or to haif medlit thairwith; HIS MAIESTIE was pair-upoun graciouslie pleisit, by his Letteris writtin and direct to your Lo., to recommend to your Lo. the settling of that ffeid³ by some amicabill and freindlie dresse, and by making of suche Affythement⁴ and satisfacioun, as convenientlie may be performed: AND in the meane tyme, it was his Maiesteis expres will, and speciall command, and direction vnto your ll., that all proces Criminall and Ciuill aganis me, for that caus, shuld rest and ceis, till some generall course war concludit vpon and tane in that matter: As his Maiesteis Letter, exhibeit vnto your ll. in the sex hundreth and nyntene zeir of God beiris. ACCOIRING quhairvnto, your Lo. hes nocht onlie gevin Warrant to desert findrie dyettis, quhilkis formerlie war appointit for my tryell in this matter, bot with that your ll. tooke verrie grit panes, in tua or thre seuerall dyettis, to haif settled this ffeid, and caused wairne ane grit number of Monyvairdis speciall freindis to that effect: And at pir dyettis your ll. causit satisfacioun to be maid to Duncane Campbell and David Malloche, who war bothe deidlie hurte and woundit at the slauchter of Monyvaird, the on haiveing his hand cut aff, and the vther being deidlie woundit in the heid; bot anent the satisfacioun for Monyvairdis Slauchter, whairin thair was verrie honorable Offeris maid; the same was cassin af, be refone of Young Monyvairdis minoritie, his freindis in the mean tyme refusing to medle pairin, or to tak burding for him; sua that the nocht settling of this buffines proceedis nocht frome the default or vnwillingnes of the offenderis, quho in heart and affection wold do mair nor goodlie thay may in pat matter, bot frome the refusall of Monyvairdis freindis to deale thairin, during his minoritie. IN consideratioun quhairof, I man⁵ maist humlie beseik your ll. to geve command to the Justice, Justice clerk, and pair deputtis to desert the said dyet, and to desist and cease fra all proceeding aganis me or my cautioneris pairintill; dischargeing thame pair of, and of pair offices in that pairt, till some generall course be takin for the finall settling of that ffead. And your ll. ansuer. (ffollowis the delyuerance on the bak pair of.)

APUD EDINBURGHE, xj Marcij, 1623. FIAT ut petitur,

GEO. CANCELL^s. MAR. MOIRTOUN. WIGTOUN. ROXBURGH. MELROIS.

LAUDERDAILL. R. COKBURNE. ALL. HAMMILTOUN. J. PRYMROIS.

THE Justice, for obedience of the said Warrant, and command thairin, Ordanit

¹ Blood-relations. ² Lordships. ³ Feud. ⁴ Compensation or *solatium* paid to the deceased's nearest of kin, on account of being deprived of their relation. ⁵ Must.

the said dyet to DESERT aganis the said *Williame Oliphant*: AND of consent of the said Mr James Campbell, continewis the dyet aganis *Alexander Flemyng of Monnefs*, to ane fyftene dayis wairning; and caution to be fund be him for his entrie to that effect.

Johnne Erle of Wigtoun of new becomes caution for the said Alexander, to enter him befor his Maiesteis Justice or his deputis, the thrid day of the nixt Justice-air of the scherefdom quhair he duellis, (Perthe,) or soner, vpon xv dayis wairning, &c.

Slaughter.

Jun. 4.—THOMAS GOWDIE, mercheand, burges of Dumfreis.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Harbert M^ckie, younger, in Dumfreis; committit vpon the last day of December lastbypast; be geving to the said vmq^{le} Harbert M^ckie, at the Brig-end of Dumfreis, of ane grit and deidlie straik, with his fute, in the said vmq^{le} Harbert his secreit pairtis; ane vther, at the left pape, vpon the heart; and ane thrid, on his left schoulder, quhairby his schoulder-bayne was strukin out of joynt: Off the quhilkis straikis he nevir convalesset, bot being instantlie borne hame to his hous, tuik bed; quhairin he lay bedfast, in grit dollour and payne, of the saidis hurtis, vnder the cure of chirurganes, be the space of tuentie dayis thaireftir; and, in end, vpon the xxvj of Januar thaireftir, now bypast, he deceiffit of the saidis hurtis and woundis.

PERSEWARIS.

Katharene Edzer, relict;
Agnes Maxwall, mother;
Eduard and Johnne M^ckie, his
tua brether.

PRELOCUTOUR

for the persewaris.
Johnne Maxwall of
Conhaithe.

PRELOCUTOURIS

in defence.

Mr Lueis Stewart,
Mr Thomas Nicolfoun,
younger, Advocattis.

The pannell, eftir reiding of the Dittay, to informe the Justice of the secreit proceedingis of thir persewaris, and how malicioullie thai proceid aganis him, declairis, that thair was nevir querrell nor discoird betuix him and vmq^{le} Harbert M^ckie, for quhais slauchter he is wrangullie and injustlie persewit; bot as the treuth is, ane contraverfie falling out betuix ane Thomas Craik and the pannell, in craveing of ane sowe of money addetit be Craik to him, and sum woirdis and dry cuffis¹ being gevin be ather of thame to vther, the Bailzie of the Regalitie of Lyncluden, viz. Johnne Maxwall, brother to Kirkconnell, within quhais Regalitie the contraverfie fell out, for putting the pairteis to quyetnes, commandit thame to waird, quhill caution war fund for keiping his Maiesteis peace; quhairvpon, the said vmq^{le} Harbert M^ckie, with ane number that assistit him, laid handis vpon the pannell, brocht him, with grit violence, to the Waird-

¹ Dry blows, i. e. upon which no blood had followed; fisty-cuffs.

hous, pat him in the stokis; and becaus the buittis that was than vpone his legis wald nocht, convenientlie, be stowit and placet within the hoillis of the stokis, thai maist insolentlie strak him vpone his bak, dung down the over¹ bar of the stokis, and dancet thairupoun with thair feit and kneis, as also vpone his breist and bellie, quhairthrow he was almost confoundit in that painful agony. And quhair, in the Dittay, it is allegit, that thair wes straikis gevin to the said vmq^{le} Harbert, quhair of he deceifit; the verritie thair of is, that ane yeir or thairby, of befor, he being strukin in at the left pape be ane Ahannay, with ane durk, a sevin inches or thairby, with grit difficultie was than curet, bot never fullilie convaleffit; sua that the corruptioun² gadding within the wound, raisit vpone him ane new fever, quhair of he deceifit; as is sufficientlie knawin to the hail countrey. Lyk as, it was declairit be the said vmq^{le} Harbert to dyuerse inhabitantis of the said burgh of Dumfreis, that, lang befor that contraverfie of the pannellis, he was strukin in the secreit pairtis, quhilk he ever declairit would be his deid. And sa, the premisses being confidderit, the said perfute is maist wrangulie inventit, and vpone greid of geir to be obtenit of this pannell be thir schameles persewaris; and, vnder cullour of justice, thay haif followit furth this perfute aganis him, albeit the defunct him self, in presens of his chirurgane and vtheris, cleirly absolut and fred the pannell of all perfute done to him.—Quhilk being premitit,³ for informatioun, it is allegit be the pannell and his prelocutouris, that this Dittay can nocht pas to ane Assyse, becaus the said vmq^{le} Harbert M^ckie, the persone allegit slane, the tyme lybellit of his slauchter, was rebell and at his Maiesteis horne, for ane criminall cause, viz. ffor nocht compeirance befor his Maiesteis Commiffioneris within the Tolbuthe of Jedburgh, vpone the tuentie sevint day of Apryle, I^m.Vj^c. and nyntene yeiris, in ane Justice court, haldin be thame the saidis day and place, to haif vnderlyne the law for beiring and weiring of hagbuttis and pistolettis, and contravening the Actis of Parliament maid thairanent. And for verificatioun thair of, producet the Letteris of Hoirning, &c.

Continued to the thrid day of the nixt Justice-air of Dumfreis, &c.—The said Thomas Goudie, defender, be his aithe gevin, declairit that he dred⁴ bodelie harme of the said Eduard M^ckie, ane of his persewaris; and thairfoir desyret cautioun and lauborreis of him, conforme to the ordour, vnder sic pane as his lordschip fould pleis modifie. Johnne Maxwell of Conhaithe become fouertie, &c., vnder the pane of ffyve hundreth merkis money, *toties quoties*.

Slaughter of two MacFarlanes—Barbarous Torture and savage Murder of a Buchanan by some of the Clan MacFarlane.

[In the whole range of the Criminal Records of this country, remarkable though they unquestion-

¹ Upper.

² Purulent or corrupted matter.

³ Premised.

⁴ Dreaded.

ably are, the Editor believes it would be difficult to point out a Case possessing incidents of such varied and frightful interest, as those brought forward, so prominently, in the following Trial. It is not his intention, in this place, to recapitulate the leading facts of the present truly horrible Case. He has not been able to throw much additional light upon the facts recorded in the Books of Adjournal from contemporary documents. All that he at present deems worthy of remark is, that *tradition* has preserved pretty accurate outlines of the general features of this 'Romance of real life' in the district where they occurred—an additional proof, were such requisite, of the fidelity with which historical and extraordinary events are handed down, from father to son, in THE HIGHLANDS OF SCOTLAND.

The only Paper which the Editor has discovered, illustrative of the other side of the question, is the 'SUPPLICATION,' preserved among the Warrants of PRIVY COUNCIL, which is appended to this Trial. That document is given here as an act of common fairness to the CLAN MACFARLANE. The reader is left to draw his own conclusions as to the relative demerits and guilt of the several parties.]

Jun. 6.—GEORGE BUCHANANE, in Gartincaber; Johnne B., his sone; Patrik B., sone to George B. of Archinar (Auchmar); Patrik M^cwreift, his fervand; Johnne Beg Buchannane, in Ballindewar; Johnne B., his sone; Johnne Keir, in Gartnahinch;¹ Thomas Buchannane, in Drongie; and Archibald B., his brother.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Duncane M^cfarlane, sone to Andro Moir M^cfarlane, in Voneffene; committit vpone the saxt day of Apryle laft, within the toun of Kippienoche, in Drummond, in the Lennox.

PERSEWARIS,	PRELOCUTOURIS	PRELOCUTOURIS
Robert and Thomas M ^c farlane,	for the persewaris.	for the pannell.
as brether;	The Young Laird of M ^c farlane;	Alexander Douglas of Maynes;
Sir Williame Oliphant, kny ^t .	Mr David Prymrois.	Mr Robert Nairne.

Compeirit the said Robert M^cfarlane, &c., and producet the criminal letteris, deulie execute and indorfate, vpone the haill perfones defenderis aboue writtin; and offerit thame selffis reddie to perfew the defenderis for the said cryme, and defyret proces.

The said Alexander Douglas of Maynes, cautioner for the entrie of the haill defenderis, with Mr Robert Nairne, Aduocat, producet ane WARRAND and command to the Justice, proceeding vpone the following

SUPPLICATION, *gevin into the Lordis of Secreit Counsell, be the foirsaidis haill defenderis, and in thair names.*

MY LORDIS OF SECREIT COUNSALL, vnto your Lo. humlie meanis and schawis WE, your feruitouris, PATRIK BUCHANNANE, appeirand of Auchmar; George Buchannane, in Gartincabir; Johnne Buchannane, his sone; Johnne Buchannane, in Ballindorne; Johnne Buchannane, his sone; Thomas Buchannane, sone to vmq^{le} Williame Buchannane, in Blairneborg; Archibald Buchannane, his broper; Donald Keir, in Gartnahinche; and M^ccaula, ferui-

¹ Perhaps for Gartranich, or Gartrahnich.

tour to the said Patrik Buchannane: THAT quhair, the saxt day of Junij instant is appointit vnto ws for our compeirance befor the Justice or his deputtis, in the Tolbuth of Edin^r, to vnderly the law for the Slauchter of vmq^{le} Duncane M^cfarlane, sone to vmq^{le} Andro Moir M^cfarlane, in Kipnoche: Lyk as, the Justice intendis to proceid aganis ws in the said matter, althoght it be of verritie, that gif your ll. war informed of þe certane treuth of this buffines, how and vpone quhat grund and occasioun the Slauchter fell out, and quhat just caus of wraith and displeasour was gevin to vs thairin, we persuaid our selffis that your lo., in honnour and justice, wald nocht think this persute to mereit ony fauour: FOR the treuth is, that þe said vmq^{le} *Andro Moir M^cfarlane*, quho, during the whole course of his vnhappie lyfe, was knowin to be ane notorious theif and lymmer, haifing stowin sum goodis frome certane of his Maiesteis guid subiectis in THE LENNOX, some foure or fyve zeiris since, or pairby; and þe said vmq^{le} *Williame Buchannane*, out of his trew haitrent and detestatioun of fuche thevische doingis, haifing maid some inquierie, and having tane panes and travell to speir out and try the goodis, in end, he tryed the goodis to be stowin be the said vmq^{le} *Andro Moir M^cfarlane*, who, by course of Justice, was constaned to mak redres and satisfactioun for the same: AND the said vmq^{le} *Andro*, haifing consauet ane deidlie haitrent and malice aganis þe said vmq^{le} *Williame* for speiring¹ of thir goodis, he resolued, out of the pryde and malice of his wikked heart, to be revenged vpone him, eftir þe most detestable and crewall maner that the heart of him could devyse: And knowing that the Gentilman was accustomed at some tymes, for his recreatioun and pastyme, to go to þe hunting, in þe Mure aboue the Ducher, he maid chose and took hold of that occasioun to do his turne; and haueing, be some previe moyane, bene maid acquaintit with þe Gentilmannis dyet for his pastyme, he, accompaneit with his tuo sones, and sewin or aucht vtheris lawles lymmaris,² come to the said Mure, and lay at await for the Gentilman; and howsone he come pair, about aucht of þe cloke in þe moirning, without ony company bot foure hunting doggis, thay layed handis vpone him and band him fast, that he mycht not steir; and haifing consultit amang thame selfis, eftir quhat forme and maner thay sould dispatche him, thay resolued, in end, that his presumptioun and malapeartnes to speir out þe saidis goodis deserued ane extraordinier deathe, by torture; quhilk thay maid him to vnderly, the space of ten houris, in maner following, to wit: Thay band him fast to ane trie, at the said hour of aucht in the moirning; and everie hour thaireftir, till sax at nicht, quhilk maid vp ten houris, thay gaif him thre crewall straikis with ane durk, in fuche pairtis of his body as war nocht to bring present daithe; and haifing this way maggillit him with threttie straikis, till þe full number of

¹ Enquiring; searching after.² Thieves; worthless characters.

ten houris war outrwn, thay than gaif him þe laſt deidlie ſtraik, at the heart; quhairwith he fell deid to the ground! And haifing turred¹ him naiked, becaus his towng was the inſtrument quhairby, as thay alleged, he offendit, in ſpeiring out of þe former ſtowin goodis, thay cuttit his throte, tooke his toung out of his heid, flew his foure dogis, cuttit ane of thair toungis out, and pat it in the Gentilman his mouthe; and pat his toung in the dogis mouthe: And nocht content heirwith, bot the forther to ſatiſfie pair inhuman and barbarous crewaltie vpon the naked corpis, thay ſlitt vp his bellie, tooke out his whole intrallis, and pat thame in ane of the dogis belleis, eftir thay had opnit the dogis bellie and tane out his intrallis, quhilkis thay pat in þe Gentilmannis bellie: And ſo left him lyand naked, and the foure deid dogis aboue him; quhair he lay aboue the eard the ſpace of aucht dayis thaireftir, or² he was found: FOR the quhilk deteſtabill boutcherie and Murthour, thir lymmeris being callit to thair tryell, befor his Maieſteis Juſtice, thay tuik the cryme vpon thame, and paſt to the horne; quhairat the ſaid *Andro* remainit till þe hour of his deathe, and the reſt of his complices remanis pairat as zit: Aganis quhome your Lo. paſt ane ampill Commiſſioun, for þe perfute of thame with ffyre and ſuord. AND quhair as, this deteſtable and moir than barbarous Murthour ſould haif bred, in the heart and conſcience of thois lymmeris, ſome remorſe and fealling of this ſyn, and ane abſtinance and forbearance frome all forder impietie, zit þe ſaid *Andro* continewit in his accuſtomet theviſche trade of Thift, Reaffe, and Oppreſſioun, and could nevir be reclaimed pairfra, till the hour of his deathe: AND, for his laſt Thift, he, a littill befor his deathe, ſtaw an ox fra me, the ſaid *George Buchannane*, and cayreid the ſamyn to ane Houſe in,³ quhair he and his wyfe hes thair ordiner reſlett; and how-ſone we vnderſtuid of the ſteilling of the ox, we followed the tred⁴ directlie toward the ſaid houſe; and haifing ſend for the *Erle of Pearth*⁵ his Officer, to aſſiſt ws in rypeing⁶ of the Houſes pairabout, the lymmar and his ſaid ſone, being in the Houſe foirſaid, and pair guiltie conſcience ſtanding vp aganis thame, as ane burreaw⁷ to tak vengeance of thame, thay diſguiſet þame ſelffis in weamenis apparell, and preiſt⁸ to flie away; whilk being perſaued be ws, and we thinking that thay keipit nocht þe ordiner paife of wemen, and zitt nawayis ſuſpecting that thay war the lymmaris, we followit, in a ſoft pace, to remark quhat courſe thay held; and the ſaid *Duncane Mcfarlane*, luiking over his ſchoulder, and ſeing ws follow, he turnes about, and preſentit ane lang hagbute at ws; quhilk being fyred, by the Prouidence of God, miſgaue: And with that, he and his father drew pair ſuordis, and come dryveand

¹ Violently ſtripped, by tearing off the clothes.

² Ere; before.

³ Left blank.

⁴ Tread;

foot-marks—probably by means of the *sleuth-hound*, or blood-hound.

⁵ As Lord of the Regality,

whoſe Bailie would, upon application, grant warrant to ſearch, &c.

⁶ Searching.

⁷ Fr. *bourreau*,

a hangman; an executioner.

⁸ *Pressed*; made every effort.

vpone ws with all pair force; and or evir we preift to perfew thame, thay gaif me, the said *George*, ane deidlie ftraik, whairat thay ftrak me deid¹ to the grund, and in the opinioun of the rest of my companie I was a deid man; and thay hurt and woundit vther thre of ws: And fua, we finding no longer tyme, with furetie, to be beholdaris and sufferaris, we tuik ws to our juft and lauchfull defence, quhairin the vnhappie lymmer was worthielie flane, and his fone, who vnhappielie was in companie with him, and who maid the first onfet with his hacquebut or euir we knew quhat he was, was lykwayis killed; the fader being rebell and at the horne for pe Murthour foirfaid, and he and his quhole bairnis being pe most notorious lymmeris of that Clan. AND howeuir it may be obietit, for pe pairt of pe young man, that he was nocht accessour to pe Murthour foirfaid, and that he fould nocht be pwneift for his fatheris deid, it is of treuth that continewallie fen pe fader was rebell for the Murthour foirfaid, the said Duncane, his fone, remanit and attendit vpone him, was airt and pairt with him in all his thevische and wicked deidis; and in affisting and taking pairt with his fader aganis ws, in our juft and lauchfull defence, was flane: At quhose lyke-walk, that nycht, the ox foirfaid, ftowin be pe fader and pe fone, was flane and eittin.

THIS being the trew and fimple difcours of all that hes past in this buffines, We humblie present the samyn to your Lo. confideratioun, quhairby your Lo. may persaeue how mischantlie² and barbaruslie the innocent and hermeles Gentleman was mordreift and flane, and quhilk was pe ground and occasioun of the fucceiding flauchteris; quhairin, becaus pair is grit appeirance of disorder to arryse, to the disturbance and brek of pe peace of pe countrey, feing THE CLAN-FARLANE gois about pair privat revenge, and our freindis [THE BUCHANANS] on pe vper pairt, will be cairfull of pair awin defence: We will humlie beseik your Lo. to tak fuche courfe and ordour heiranent, as your Lo. fall think fitteft for the peace of pe Countrey; and we, for our pairtis, will be willing to vnderly quhateuir your Lo., in honnour and justice, fall prescryve to ws. And becaus this can nocht be done vpone the suddane, bot will requyre some tyme and lasour to be tane ordour with and satled; We most humlie beseik your Lordschipis to geve command to pe Justice, Justice-Clerk, and pair deputis, to DESERT pe said dyet, and to desist and ceis fra all proceiding aganis ws thairin, or calling of our cautioneris for our entrie; discharging thame pairof, and of pair offices in that pairt: Quhairanent pir presentis fall be pair Warrant.

AND your Lordschipis humlie I beseik.

ORDINANCE of the Lordis of Secreit Counfall, on the above Supplication.

APUD *Halyrudhous*, quinto Junij, 1623. THE LORDIS Ordanis and commandis the Justice, Justice Clerk, and pair deputis, to continew the dyet within writtin to pe xiiij day of Junij instant:

¹ Insensible; in a dead swoon.

² Old Fr. *meschantement*, wickedly.

And Ordanis thir complineris to mak OFFERIS to the pairtie, and to present the Offeris to pe YOUNG LAIRD of M^cFARLANE, yf he be in the toun, and to pe speciall freindis attending this dyet, quhome the saidis Lordis Ordanis to remane in this toun of Edinburghe till some ordour be tane for satling of the matter within writtin, and for the peace and quyetnes of pe Countrey. And Ordanis the Justice to dispens with the personall compeirance of pe pairtie, vpone new caution, conforme to pe ordour.

GEO. CANCELL^s, I. P. D.

And thairwith also producet OFFERIS, in writt, conforme to the Ordinance aboue writtin; quhilk was presentit be *the Young Laird of Buchannane* to the Justice, to be delyuerit to *the Young Laird of M^cFarlane*, also personallie present.

THE JUSTICE, for obedience of the Counfallis ordinance, Continewis the dyet to the xiiij *instantis*: And Ordanit the persewaris to confidder vpone the Offeris in the meane tyme: And siclyk Ordanis caution to be fund for the haill defenderis re-entrie that day, vnder the panes contenit in the Actis of Parliament.

Mr David Prymrois protestit, that this Warrant, and Offeris presentit this day, nawayis prejudge the persewaris of thair lauchfull persute, for the slauchter of thair freind and kinsman.

The Laird of Maynes become caution for re-entrie of the haill defenderis, contanit in the Letteris, the day foirsaid, &c.

Jun. 14.—COMPEIRIT personallie, THE LAIRD OF M^cFARLANE, ELDER, as CHEIFF to the persewaris, and desyret proces on the ane pairt; and on the vther pairt, Compeirit Alexander Douglas of Maynes, as cautioner for the defenderis entrie this day, and producet,

WARRANT of the Lordis of Secreit Counfall, &c.

MY Lordis of Secreit Counsell, vnto your Lordschipis humlie meanis² and schawis I, your seruitour, George Buchannane, appeirand of that ilk: That quhair, for obedience of your Lordschipis ordinance, I, in name of my freindis quho war callit for the slauchter of vmq^{le} Duncane M^cFarlane, haif maid Offeris to the pairtie; quhairin I haif offerit, that thay, or I, in pair names, fall submit thame selffis to pe ERLES of MAR, MENTEITH, WIGTOUN, and LINLITHGOW: As pe coppie of my Offeris, heirwith producet, beiris. Whairanent, as zitt, thay haif retournet no ansuer; sua that it appeiris my Offeris ar reiectit. And gif your Lordschipis fall nocht find thir Offeris to be sufficient, I, in pair names, offeris to caus thame submit all thair differences to your lordschipis, and to do thairin as your lordschipis fall think meitt. Heirfoir, I beseik your ll. to confidder of thir Offeris, and to do thairin as your ll. fall think meit for pe peace of pe cuntrey. And becaus the matter can nocht be presentlie settled and put to ane poynt, that your lps. will geve a new Warrant to the Justice, Justice-clerk, and pair deputis, to continew pe dyet appointit to my freindis for pair tryell befoir thame, vnto suche ressonabill day as your lps. pleissis. And your llps. ansuer.

APUD Halyrudhous, *duodecimo Junij*, 1623. THE LORDIS OF SECREIT COUNSALL Ordanis and Commandis the Justice, Justice-clerk, and pair deputis, to proceid and minister justice in pe matter within written, aganis Johnne Buchannane, sone to *Johnne Beg*, and *Archibald Buchannane*, sone to vmq^{le} *Williame Dow*. And to Desert pe dyet for pe remanent persones charget to compeir to vnderly pe Law for pe Slauchter within writtin: Quhairanent pir presentis fall be vnto pe said Justice, Justice-clerk, and pair deputis, a sufficient Warrant.

GEO. CANCELL.

¹ In presentia dominorum (Secreti Consilij.)

² Complains; literally, *moans*, or *bemoans*.

THE Justice Ordanis THE DYET TO DESERT vpon the hail defenderis insert in the Letteris, except as above; and justice to be profecute and followit furth aganis thame, conforme to the ordour. And Ordanit the said Alexander Douglas, as cautioner foirsaid, to be vnlawit for nocht entrie of the saidis Johnne and Archibald Buchannanes, in the pane of ane hundreth merkis for ather of thame. And siclyke, that the saidis Johnne and Archibald fall be denuncet our fouerane lordis rebellis, and put to the horne; and all thair moveable guidis to be escheit, &c.

APPENDIX TO THE PRECEDING TRIAL.

SUPPLICATION *by the Kin and Friends of vmq^{le} Duncane M^{ac}Farlane to* THE LORDS OF PRIVY COUNCIL.¹

MY LORDIS OF SECREIT COUNSELL, vnto yo^r lo^{ps} humelie menis and schawis we, yo^r feruitouris, the KIN and FREINDIS² of vmquhile DUNCANE M^cFARLANE, sone to vmquhile Andro M^cFarlane, in Kipnoche: THAT quhair, the said vmquhile *Duncane*, a young boy of the aige of xvj yeiris, or thairby, being most shamefullie and cruellie slayne be certane of THE NAME OF BUQUHANNANE, vpon sett purpois, prouisioun, and foirthocht fellouny; we, foirbeareing to atone priuie revenge, and in most submissiue obedience to HIS MAIESTIE and his Lawis, haueing resolued, be the ordinar course of iustice, to follow out the tryall of that slauchter; we, for this effect, raised Letteris, and charged the Criminallis to thair tryall befor HIS MAIESTEIS Justice, vpoun the fact of this instant: At the quhilk day, we, lookeing that the course of iustice sould haif had place, conforme to the Lawis of the Kingdome, notwithstanding, it is trewthe, that yo^r lo^{ps}, vpoun the finifter and wrong informatioun of the pairtie, concerning the slauchter of vmquhile WILLIAME DOW BUQUHANNANE, w^{lk} thay aggregait³ with siche circumstances, and after siche a detestable maner, as might mak we, who ar innocent, to seame odious.

AND towcheing the occasions of the slauchter of the young boy and of his fader, and of the forme and maner thair of, grantit ane WARRANT for continewatioun of our dyet, till the xiiij of this instant; by the quhilk, not onlie we, bot the Gentlemen of the Cuntrie, who ar summoned vpoun the Assise, ar verie far preiudgen and troublit, and the course of iustice is interruptit and hinderit; and we persuaue oure selffis that yo^r lo^{ps} in yo^r awne honourable regaird and dispositioun to iustice, wald neur haue grantit siche ane Warrant, yf yo^r lo^{ps} had bene treulie informed anent the slaughtair of the innocent and harmles young boy; ffor althocht we will not prease to extenuat the slauchter of vmquhile *Williame Dow*, who, to our regrait, wes mischeantlie⁴ and vnworthelie slayne, yitt we may treulie afferme vnto yo^r lo^{ps}, that anent the forme, maner, and circomstanceis of the slauchter, as is punctuallie sett down in THE PETITION givin in to yo^r lo^{ps}; and anent the forme, maner, and occasiouns of the slauchter of the young boy and his fader, as is lykwayes sett down in the Petitioun, and q^{lk} wes the ground whervpoun yo^r lo^{ps} wer moved to grant the said continewatioun, the pairty hes verie far ouersene thame selffis, and past the boundis of modestie; and hes abused yo^r lo^{ps} with thair finifter and wrong informatioun; quhilk, yf thay be able to iustifie and mak good, as thay haif sett down in the Petitioun, first, anent the maner of the slaughter of *Williame Dow*, and how that the slaughter of the boy proceedit vpoun occasioun of thair following of ane stollin ox, quhilk thay alledgeit in thair BILL⁵ wes stollin be the said Andro, and eattin at his lykewalk;⁶ and that the boy, assisting his fader, presentit ane hagbute, w^{lk} misgaif, and thairefter concurring w^t his fader in persute of the *Buquhannanis* wes slayne;

¹ From the Original, preserved among the Warrants of Secret Council, General Register House, Edinburgh.

² Blood-relations.

³ Aggravated.

⁴ Wickedly; O. Fr. *meschamment*.

⁵ Bill of Supplication.

⁶ See this Trial, p. 549.

we ar content, without forder ceremonie, to tak the pairtie be the hand,¹ and to renunce o^r Criminall perfute againes thame: ffor the treuthe is, that thay come to the boyis houe, quhairof he wes tennent to the *Erle of Perth*, vpoun sett purpois and provisioun; and the boy, apprehending his danger, after he hard the shoute raifed be thame, he fled for faultie of his lyffe; whome thay followit ane lang way; and haueing ouertane him, and he being thair prifoner, thay broght him bak half ane myle, and in cauld bloode, cruellie and barbaroullie slew and manglit him, but² pitie or compaffioun, with xvij deadlie woundis, with durkis; and haueing caffin him on his bellie, quhair he lay deade vpoun the ground, thay, the forder to fatisfie thair raige vpoun the poore corps,³ cuttit his bak in tua with fwerdis.

This is the fimple trewth of the buffynes, w^{lk} we will stand to: And thairfoir, we will humblie beseike y^r lo^{ps} to caus thair Petitioun to be exhibite be the saidis personis befoir yo^r lo^{ps}, to the intent the trewth of the circumstanceis of the slaughteris, as thay ar sett down in the said Petitioun, may be examined be yo^r lo^{ps}, and ordour tane thairin accordingle. AND seeing, we haif, in all modestie, and w^t grite patience, as humble and dentifull subiectis [to HIS MA^{TIE}] focht the benefeit of his Lawis, We humelie beseeke yo^r lo^{ps} that the same may be grantit vnto ws, and that no forder continewation be grantit to o^r⁴ pairty: And yo^r lo^{ps} anfuer.

DELIVERANCE by the Lords of Privy Council. [On the back of the foregoing Petition.]

APUD Halyrudhoufe, decimo Junij, 1623. THE LORDIS Ordanis a Maiffer to pas and warne both the pairtyis, the *Barone of Achyll*, *David Drummond of Innermaith*, and *Mr Alex^r Seatoun of Gargonnok*, to compeir befoir the Lordis, vpoun Thurisday nixt, to heir and fie ordour tane in the mater within-writtin, as accordis.

GEO. CANCELL^s.

Usurpation of the King's authority—Taking captive, &c.

Jun. 18.—ALEXANDER GORDOUN, appeirand of Erlestoun, and James Gordoun, messinger.

Dilaitit of the Vfurpatioun of our fouerane lordis authoritie, in taking and apprehending of Johnne Glendoning of Drumrasche, and keiping him captiue and prifoner be the space of thre houris, *in privato carcere*, he being his Majesteis frie lege, and thai haifing na power nor commiffioun for that effect; committit in Februar, or thairby, laft.

The perfewar passis *simpliciter* frae the pannellis perfute: Quhairvpoun thay askit instrumentis.

THE JUSTICE ordanis caution to be ffund be the said Alexander, for his entrie, vpoun xv dayis (wairning) for the Kingis pairt; quha fund Vthreid M^c-Dowell of Mondurk, fouertie, &c.

Resetting of a stolen Purse, &c.

Jun. 18.—JOHNNE DOUGLAS in St Leonardis, and Agnes Mustard his spous.

Dilaitit of the Thiftious Resetting of ane ftowin purse, with ffyve hundreth pundis of gold; and tua jewellis being thairin, worth thre thowfeand pundis; pertening to Sir Johnne Scott of Newburgh; ftowin fra him be Margaret Ahannay.

¹ To be reconciled. ² Without. ³ By way of retaliation, no doubt, for the horrible butchery committed upon the person of *Buchanan*, before referred to. ⁴ Probably for *outher*, i. e. either party.

PERSEWARIS, Sir Johnne Scott of Newburgh, Sir Williame Oliphant, kny^t.

PRELOCUTOURIS in defence, The Laird of Maynes, Mr Laurence M^cGill, James King.

Eftir the reiding of the Dittay, and accusatioun of the pannell of the crymes thairin contenit; it was allegit be the pannell and thair prelocutouris, that the first pairt of the Dittay is nawayis relevant, anent the reffett of the stowin purse and jewellis thairin; vnles the principall steiller war first callit, and ather convict and pwneift for the cryme, or ellis declarit fugitiue thairfoir: For, gif the principall steiller thairof, viz. Margaret Ahannay, war accuset in this judgement, for the said allegit cryme, it wald be allegit and verifeit be hir, that gif ony purse was apprehendit or gottin be hir fra the persewar, that it was *precium pudicitie*, gevin be him to hir. And thairfoir, quhill first scho be callit, na proces.

THE JUSTICE, in respect na dilligence is vsset aganis the said Margaret Ahannay, Ordanis the pannell to find caution for thair re-entrie, vpoun xv dayis wairning: Quha fand James Douglas, portioner of Lugtoun, and Williame Douglas, hatmaker, burges of Edinburghe.¹

Slaughter.

Jun. 27.—COILL M^cGILLESPIK M^cDONALD in Collonfay, Archibald M^cDonald, his sone, and four others, ‘feruitouris to the said Coill.’

Dilaitit of airt and pairt of the fellone and crewall Slauchter of vmq^{le} Malcolme M^cphie of Collonfay, Donald Oig M^cphie, Dougall M^cphie, Johnne M^cquhirrie, and Ewir Bayne, alias Quhyte; committit in Februar last.

PERSEWARIS, Marie M^cdonald, the relict; Donald Oig M^cphie, as sone; Katharene, Anne, and Fynwall M^cphies, as dochteris to vmq^{le} Malcolme; Murdoche M^cphie in Ilay, as brother to vmq^{le} Donald Oig, and Dougall M^cphie, and as nerrest of kyn to vmq^{le} Johnne and Ewir.

Johnne Quhyte, wryter, producet the Letteris duellie executed, &c. and protestit for releif of Archibald Campbell, brother to the Laird of Caddell, cautioner for repoirting thairof.—Coll M^callaster, ffear of Dounfkey, as cautioner for the said Coill, &c. vnlawit, for nocht entrie of ilk ane of the saidis perfones, in the pane of ane hundreth merkis. And ficlyk, the Justice Ordanis that the saidis Coill, &c. fall be denuncet our fouerane lordis rebellis, and all thair moveabill guidis to be escheit, &c.

Taking Captive and Strangling, &c.

Jul. 2.—JOHNNE GRANT of Glenmoreistoun, Finlay M^cean Roy in Invermoreistoun, and Alexander Dow M^cean Roy, his brother.

Dilaitit for Vfurpatioun of our fouerane lordis autoritie, in taking of vmq^{le} Donald M^cffindlay V^cnorofiche, mercheand, vpone the landis of Glenmoreistoun, binding his handis behind his bak, and cayreing him, as ane malefactour, to ane

¹ It is likely that this pursuit was abandoned. At least no farther notices occur in the Record.

woid neir to the landis of Glenmoreiftoun; quhair thay, as hangmen, hang him vp vpone ane trie of the said woid, and wirreit him to deid;¹ and thaireftir cuttit him doun, and, with thair durkis, gaif him dyuerse ftraikis in the breift and bellie, to the effusioune of his bluid in grit quantitie; and thaireftir, cayreit him to ane burne-bra,² vnder the quhilk they bureit him, be casting the said bray vpone him; committit in the moneth of September, 1602 yeiris.

PERSEWARIS, Fynlay Vik-finlay V^cnorofyche, in Kintaill, as brother; Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord.

James Logy, wryter, producet the Letteris, duellie execute, &c., and protestit for releif of Mr Alexander M^ckenzie of Culcovie of his cautionrie.—Patrik Grant of Carroun, as cautioner for the pannell, Ordanit be the Justice to be in ane amerciament, for nocht entrie of the said Johnne Grant, in the vnlaw of V^cmerkis; and of ather of the saidis Fynlay and Duncane, in the pane of ane hundredth merkis.

[*Mr Alexander Coluile, Justice-Depute.*]

Slaughter.

Jul. 9.—JAMES STEWART, Stewart-depute of Menteith; Duncane Stewart, his brother-germane, and others.³

Dilaitit of the Slauchter of vmq^{le} Robert M^cphatrik Campbell, and vmq^{le} Malcolme M^ccall; committit in Apryle last, vpone the landis of Dochallie, on Lochow-fyde.

INTRAN. *similiter.*

ALLASTER M^cPHATRIK V^cALLASTER, in Balquhidder; Robert Dow M^ccondochie V^cJames, thair; Duncane Oure Stewart M^cinrie, thair; Archibald Stewart, thair; and Williame M^cphatrik Stewart, thair.

Dilaittit for the crymes aboue writtin.

PERSEWAR, Patrik Campbell, in Kenderoche, brother to vmq^{le} Robert.

The Laird of Keir takis instrumentis of the entrie of the fourtene on pannell (Stewarts), and protestis, in that respect, for his awin releif, as cautioner, &c.; and as to Duncane Stewart, declairis he hes fallin feik, sen his cuming to Edinburgh, and thairfoir could nocht compeir.—Sir Mungo Murray protestis for his releif, as cautioner for the others, ‘the ffyve men of Balquhidder.’

THE JUSTICE, with consent of the persewar, continewis this matter to ane xv dayis wairning; and Ordanis the pannell to find caution for thair entrie.—The Laird of Keir, and Sir Mungo Murray, of new become cautioneris.

¹ Strangled him to death. ² Burn-brae, a sloping bank, along the foot of which a *burn* or rivulet runs. ³ Their names are, Alexander Stewart, *alias* M^cean, in Glenfinglas; Johnne, Archibald, and Andro Stewartis, his thre sones; Patrik Stewart of Stragartnay; Johnne Stewart, his brother; Robert Stewart, sone to Andro Stewart of Blairgarrie; Patrik M^cKyndlay Gill, in Glenfinglas; Walter M^ceandowie, *alias* Stewart; Johnne M^cintyre, feruitour to James Stewart; Gilliechreift Dewar, Duncane M^ceane Vaill, and Donald Reoch, fervand to the said James Stewart.

My Lord of Murray, present, obleift him to Warrant and releif the Laird of Keir of his former cautionerie, &c.

Breaking Gardens—Theft, &c.

Jul. 23.—JOHNNE RATE, and Alexander Deane, cramer.¹

Dilaitit for the breking of the yairdis² of Barnetoun, Piltoun, Barnebougall, Craikcruik, Cragyhall, Langhirdmeftoun, Carlowrie, and Libbertoun, and dyuerfe vtheris yairdis, within Eift and Weft Louthiane: Steilling and away-taking furth thair of, off dyuerfe herbis, bie-fkeppis,³ fyboes,⁴ plantis, kaill-feid, arte-choiffis,⁵ diftilled watteris, plaittis and trunfcheouris,⁶ with ane tyn-ftoupe,⁷ furth of the place of Langhirdmeiftoun; committit at dyuerfe tymes, within this moneth bygane.

The perfones on pannell confeffis the Dittay, and crymes thairin contenit.

VERDICT. Fand the faidis Johnne and Alexander, conforme to thair awin Judicial Confessioun, to be ffylet, culpable, and convict, &c.

THE Justice Ordanit thame to be tane bak to waird, thair to remane quhill he be advyfet with the Lordis of Secreit Counfall, anent the Dome to be pronuncet aganis thame, for the faidis crymes.

Jul. 25.—SENTENCE. The Justice Ordanit the faidis Johnne Rait and Alexander Deane to be tane to the Burrow-mure of Edinburghe, and thair to be Hangit quhill thay be deid; and thair haill moveable guidis to be efcheit, &c.: And that by virtue of the following WARRANT of the Lordis of Secreit Counfall.

JUSTICE, Justice clark and 3our deputis. 3ow fall pronounce Sentence of daith againft Johnne Rait and Alex^r Deane, cramer, who was convict of befoir in Muffilburghe, for the breking of 3airdis and fteilling of findrie bie-fkepis furth of the fame; and who, fince thair apprehensioun, haif of lait bene convict befoir 3ow of the fame crymes; committit be thame fince thair laft convictioun and pwneifment following thairupoun. And that 3ow caufe the Sentence of daith be execute vpone thame: Quhairanent theife presentis fall be vnto 3ow ane fufficient Warrant. Gevin at Halrudhous, the xxiiij day of July, 1623.

GEO. CANCELL^s. GLENCARNE. NITHISDAILL. OLIPHANT. HAMILTON.

Sorcery—Witchcraft.

Aug. 1.—THOMAS GREAVE.

Dilaitit of dyuerfe poyntis of Sorcerie and Witchcraft following, viz.: For cureing of the perfones following, be Sorcerie and Witchcraft, to wit: ANE fone of Archibald Arnote in the Wayne, of ane heavie and vncouth⁸ feiknes: ANE fone of Andro Geddis in Freuchie, alfo hevilie diffeifit: ANE bairne of Thomas Kilgoures in Falkland, viffeit with ane grevous feiknes. ITEM, ffor cureing, be

¹ Huxter; one who keeps a petty booth for the sale of small wares. ² Gardens. ³ Bee-hives. ⁴ A young or small sort of onion. ⁵ Artichokes. ⁶ Trenchers. ⁷ Tin flagon. ⁸ Strange; unusual; unaccountable.

Sorcerie and Witchcraft, and making of certane croces and finges,¹ off Daud Chalmer in Lethame, and be causeing wasche his fark² in ane South-rynnand watter, and thairefter putting it vpone him; quhairby he reffaut his helthe. ITEM, ffor cureing of ane woman in Ingrie, besyde Leslie, of ane grevous feiknes, be taking the feiknes af hir and puting it vpone ane kow; quhilk kow thaireftir ran woid,⁴ and deit. ITEM, ffor cureing off Alexander Laufones bairne, in Falkland, of grit feiknes, be Sorcerie, and making of certane signes, and vttering of dyuerse vnknawin woirdis. ITEM, ffor cureing of ane woman, duelland besyde Margaret Douglas, of ane grit and panefull feiknes, be drawing hir nyne tymes bakward and fordward be the leg. ITEM, ffor cureing of Michael Glassies wyfe, in the Mylnes of Forthe, of ane grevous feiknes, be cauffing brek ane hoill in the wall, vpone the North syde of the chymnay, and putting ane hesp⁴ of yairne thre feveral tymes furth at the said hoill, and taking it bak at the dur; and thaireftir, causeing the said Michaelis wyfe ix tymes pass throw the said hesp of yairne, and thairby to procure hir help. ITEM, ffor cureing, be devillerie and Witchcraft, of Williame Kirkis bairne, in Tulliebule, of the feiknes callit *Morbus caducus*,⁵ be straiking bak the hair of his heid, taking ane lang claith, with certane vnguent and vther inchantit matter, furth of ane buist,⁶ and rowing⁷ the bairne nyne tymes within the said claith, vttering, at ilk tyme of the putting about of the claith, dyuerse wordes and croces and vther signes; and be that meanis pat the bairne asleip; and thairby, throw his devillerie and Witchcraft, curet the said bairne of the said feiknes. ITEM, vnderstanding that Johnne Fischer, in Achalanfkey, was heviellie diseasit of a grevous and vnknawin fever, vpone aduerteisment gevin to him thairof, he causit bring the said Johnne Fischeris fark to him; quhilk fark being brocht, the said Thomas, turning it over, cryit out at that instant, 'Allace! the Witchcraft appointit for ane vther hes lichted upone him!' And, luiking at the breist of the fark, he tauld 'that the feiknes was nocht cum as zit to his heart.' And eftir some croces and signes maid be the said Thomas vpone the fark, delyuerit the fark to Jonet Patoun, the said Johnne Fischeris mother, commanding hir, with all speid to ryn to him thairwith; and declairit to hir that 'Gif scho come thairwith, befoir his heart was assaulted,' he sould convalesce; At quhais cuming to him with the said fark, the said Johnne hir sone was deid. ITEM, ffor practizeing of dyuerse poyntis of Sorcerie vpone Williame Beveridge, in Drumkippie, in Salen, and cureing him thairby of ane grevous feiknes, be causeing him pas throw ane hesp of yairne thre feuerall tymes; and thairefter burning the said hesp of yairne in ane

¹ Crosses and signs.² Shirt.³ Mad.⁴ A hasp of yarn is equal to twelve 'cuts,' or six 'heer.' Each 'cut' goes six score times round the reel.⁵ Epilepsy, or the falling sickness.⁶ Out of a small box or chest.⁷ Wrapping; rolling.

grit ffyre, quhilk turnet haillilie blew. ITEM, ffor cureing of Margaret Gib-fones ky,¹ in Balgonie, be putting thame thryse throw ane hespe of yairne, and casting of certane inchantit watter, inchantit be him, athort² the byre; and thairby making thair milk to cum to thame agane, quhilk thay gaif nocht ane moneth ofbefoir.³ ITEM, at Martimes, 1621, Elspeth Thomesone, fister to Johnne Thomesone, portioner of Pitwar, being visseit with ane grevous seiknes, the said Thomas com to hir hous in Corachie, quhair, eftir fichting and gripping of hir, he promeist to cure hir thairof; and so this effect callit for hir fark, and desyret tua of hir nerrest freindis⁴ to go with him: Lykas, Johnne and Williame Thomesones, hir brether, being sent for, past with the said Thomas, in the nicht seasone, fra Corachie towardis Burley, be the space of tuelff myles; and inioynet the tua brethir nocht to speik ane woird all the way; and quhat euir thay hard or saw, nawayis to be effrayed, faying to thame, 'it mycht be that thai wald heir grit rumbling, and sic vncouth and feirfull apparitiones, bot nathing sould annoy thame!' And at the ffurde be-eist Burley, in ane South-rynning watter, he thair wusche the fark; during the tyme of the quhilk wasching of the fark, thair was ane grit noyse maid be ffoullis,⁵ or the lyll beiftis,⁶ that arraise and flichtered in the water. And cuming hame with the fark, pat the samyn vpone hir, and curet hir of hir seikens: And thairby committit manifest Sorcerie and Witchcraft. ITEM, ffor cureing of Williame Coufines wyfe, be Sorcerie and Witchcraft, be causing hir husband heit the coulter of his pleuch, and cule the samyn in watter brocht from Haly Well of Hillfyde; and thaireftir, making certane coniurationes, croces, and signes vpone the watter, causet hir drink thairof for hir helth; and thairby, be Sorcerie, curet hir of hir seiknes. ITEM, ffor cureing, be Sorcerie and Witchcraft, of James Mwdie, with his wyfe and childrene, of the fever; and namelie, in cureing of his wyfe, be causeing ane grit ffyre to be put on, and ane hoill to be maid in the North fyde of the hous,⁷ and ane quik hen⁸ to be put furth thairat, at thre feuerall tymes, and tane in at the hous-dur, widderschynnes;⁹ and thaireftir, taking the hen and puting it vnder the seik womanis okstar,¹⁰ or airme; and thairfra, cayreing it to the ffyre, quhair it was haldin down and brunt quik thairin; and be that devillisch maner, practizet be him, curet hir of hir seiknes: ffor the quhilk, the said Thomas reffaut xx lib. fra hir husband. AND last, ffor commoun Sorcerie and Witchcraft, practizet be him, and abuseing the people thairby; expres aganis Godis devyne Law, and Actis of Parliament maid aganis Sorceraris.

VERDICT. The Assyse, being ryplie advyset thairwith, togidder with certane

¹ *Kine*; cattle. ² Athwart; across. ³ Which they had not yielded for the space of a month. ⁴ Kinsmen; relations. ⁵ Water-fowl. ⁶ Little 'beasts'; *Scotticé*, for some sort of small birds or fowls, such as snipes, &c. ⁷ A hole to be made in the north wall of the house. ⁸ A live fowl. ⁹ Backwards; contrary to the course of the sun. ¹⁰ Arm-pit.

Depositiones producet be Mr Johnne Cowdoun, Minister at Kynrois, Mr Edmond Myles, Minister at Cleifche, Mr Robert Coluile, Minister at Cleifche, ffor verification thair of; thay, be the declaratioun of Williame Dempstartoun, chancellor, fand, pronuncet, and declairit the said Thomas Greave to be ffylet, culpable, and convict of the haille poyntis of Dittay aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be Wirreit at ane staik, quhill he be deid; and his body thaireftir to be Brunt in asches, as culpable and convict of the saidis crymes of Sorcerie and Witchcraft.

Offices of the Clerkship of Justiciary-general and Master of the Ceremonies, &c.

Nov. 28.—SIR ARCHIBALD NAPER of Merchinstoun, kny^t, Thesaurer-depute to our souerane lord of this Kingdome, producet his Maiesteis Gift, grantit to him, vnder his hienes Previe seall, of the Offices of the CLERKSCHIP OF JUSTICIARIE-GENERALL, and MAISTER OF THE CEREMONEIS at the Creatioun of all Erles, Lordis, and Barrones, and of all vther solemne Assembleis, quhair honourable ceremoneis ar accustomat and necessarie to be vsed, within the kingdome of Scotland; with all richtis, privileges, liberteis, feyis, casualteis, proffeitis, and deuteis quhatfumeuir, pertaining and belonging thairto; during all the dayis of the said Sir Archibaldis lyf tyme: Vacand in his Maiesteis handis, be dimissoun of Sir Johnne Cokburne of Ormestoun, kny^t, last Justice Clerk, and Maister of the said Ceremoneis. Dated at Roystoun, the sext day of November, 1623.—Which Gift was ordanit to be insert in the Registeris of Adiornall, *ad futuram memoriam*.

Commission of Justiciary,

IN FAVOUR OF SIR GEORGE ERSKINE OF INNERTEILL.

Jan. 23, 1624.—MY Lord of Innerteill, as Justice to our souerane Lord, producet his Maiesteis Commisshoun of Justiciarie; and desyret the samyn to be insert in the Register of Adjournal, *ad futuram memoriam*.

JAMES R.

JAMES, by the grace of God, King of Grite Britane, France, and Ireland, defender of the ffaithe; To all and findrie our leigis and subiectis whome it effeiris, to whose knowledge thir our Letteris fall come, greating. FORSAMEKILL AS, the place and Office of the JUSTICE of this our Kingdome is now voyde, and the administratioun of Justice, in matteris propper to that judgement, ceasses by the absence of those who formarlie suppleit that place: AND whear as, the frequent occasioun, daylie occurring within this our kingdome, requyres a present choise to be maid of some sufficient and qualifeit persone to exerce the said place and office: And We, vnderstanding the goode affectioun of our trustie and weilbelouit counsalour, *Sir George Erskine* of Innerteill, to do ws seruice, and that he is a persone of sound and vpricht judgement, and vtherwayis accomplischet and furneist with giftis anfuerable to the

¹ From the peculiarity of this document, it has been thought right to preserve it entire, without abridgement.

dignitie of fuche ane imployment : Thairfoir, We haif maid and constitute, and be the tennour heirof makis and constitutis, the said Sir George our JUSTICE, and geves to him the Office thairof, with all honnouris, digniteis, prevelegis, and prerogatiues belonging thairto ; to be posselt, bruiket, vsed, and exerced be him als frelie and amplie, in all respectis and conditiones, as ony vtheris his prediceffouris in the said Office formerlie bruiket the same ; with power to him to fense and hald Justice-Courtis within the Tolbuith of our burghe of Edinburghe, and vtheris pairtis of our Kingdome, accoirding as the necessitie of oure seruice schall requyre, and to proceid and minister justice in all and findrie materis occurring in that judgment, and vpone all persones of quhatfomeuir qualitie, that fall be presentit in judgement befoir him, to abyde thair tryell ; and accoirding as thay fall be fund Guiltie or Innocent of the crymes to be obietit vnto thame, and to be laid to thair charge, to caus justice be ministrat vpone thame, conforme to the lawis of our realme : Affyffes neidfull, to this effect, vnder the vsuale and accustomed panes, to summond, wairne, choose, and caus be suorne ; and to creat officiaris and memberis of Court neidfull ; and all vther thingis neidfull towardis the executioun of this our Commissioun to do and vse, whiche laughfullie, in such caises, may be done ; fferme and stable halding, and for to hald all and quhatfomeuir thingis fall be laughfullie done heirin. CHARGEING heirfoir yow, all our said leiges and subiectis, to reuerence, acknowledge, and obey our said Justice, in all and everie thing tending to the executioun of this our Commissioun : As yow and everie ane of yow will answeir to us vpone the contrair, at your perrell. This our Commissioun, dureing our will and pleasour, and ay and quhill we discharge the same, to indure. GEVIN vnder our signet, AT ED^B, the tuentie day of Januare, and of oure reigne the lvij and xxj yearis, 1624.

GEO. CANCELL^S. MELROS. LAUDERDAILL. R. COKBURNE. KILSAYTH.
W. OLIPHANT. A. HAY. AR. NAPER. J. HAMILTON.

[*Sir George Erskyne of Innerteill, knyght, Justice.*]

Egyptians—Vagabonds—Sorners, &c.

Jan. 23.—CAPITANE JOHNNE FAA, Robert Faa, Samuell Faa, Johnne Faa younger, Andro Faa, Williame Faa, Robert Broun, Gawin Trotter, all Egyptianis, Vagaboundis, and commoun Thevis, &c.

Being enterit vpone pannell be the Magistratis of Ed^r, dilaitit, accuset, and persewit be Sir Williame Oliphant of Newtoun, kny^t, of the cryme vnderwrittin, viz. FORSAMEKILL AS, ffirst, be Act of Secreit Counfall, maid in the moneth of Junij, or thairby, in the yeir of God 1603, and Proclamatioun following thairupoun, commanding and chargeing the Vagaboundis, Soirneris, and commoun Thevis, commonlie callit EGIPTIANES, to pas furth of this Kingdome, and to remane perpetuallie furth thairof, and nevir to retorne agane within the samyn, vnder the pane of daithe ; quhilk Act of Secreit Counfall, and Proclamatioun following thairupoun, be the 13 Act of our souerane lordis 20 Parliament, haldin at Edinburgh vpone the 24 of Junij, the yeir of God 1609 yeiris, is ratifeit, approvin, and confirmet be his Maiestie and Estaitis of Parliament than convenit ; and the same Act ordanit to haif force and executioun, eftir the first day of August nixt thaireftir following, in the foirsaid yeir of God I^m.Vj^c. and nyne yeiris ; eftir the quhilk tyme, gif ony of the saidis Vagaboundis callit EGIP-

TIANES, alfwieill wemen as men, fall be fund within this kingdome, or ony pairt thair of, it fall be leasum to all his Maiesteis goode subiectis, or ony of thame, to caus tak, apprehend, imprissone, and execute to death, the saidis Egiptianes, ather men or wemen, as commoun, notorious, and condemned Theves, by ane Assyse, only to be tryed¹ that thay ar callit, knawin, and repete and haldin Egiptians: In the quhilk caice, quhatsoever of the Assyse hapins to clange ony of the foir-saidis perfonas, Egiptianes, pannelled as said is, falbe persewit, handillit, and censuret as committeris of Wilfull Errour. As the saidis Actis of Secreit Counfall, Proclamatioun following thairupoun, and Act of Parliament aboue writtin, deulie publeist, in the selff proportis. Nochtwithstanding quhair of, it is of verritie, that the foirnamet aucht perfonas impannelled, and ilk ane of thame, being Vagaboundis, Soirneris, cowmoun Thevis, callit, knawin, repete, and haldin EGIPTIANES, in plane contempt of his Maiesteis lawis and Actis of Parliament, hes prouddie repairit to this kingdome, remanit and abiddin within the samyn, and nawayis depairtit nor past furth thair of, sen the said first day of August, 1609 yeiris, appointit for thair away-passing; incurring thairthrow the pane and pwneischment aboue writtin, mentionet in the said Act of Parliament.

ASSISA.

James Lokhart, elder of Lie, Leith of Hairthill, Williame Sydserff of Ruchelaw.²

VERDICT. The Assyse, for the maist pairt, be the declaratioun of the said James Lokhart of Lie, chancellor, ffand, pronuncet, and declairit the saidis perfonas (being all Vagaboundis, and repete and haldin for EGIPTIANIS) to be Giltie, culpable, and convict of contravening the tennour of the said Act of Parliament, &c.

THE JUSTICE continewis the pronunceation of Dome, vpone the former³ conviction, to the morne; that in the meane tyme he may advyse with the Lordis of Secreit Counfall thairanent: And ordanit the pannell to be tane bak to waird, in the meane tyme.

Jan. 24.—SENTENCE. To be tane to the Burrow-Mure of Edinburgh, and thair to be HANGIT quhill thay be deid; and thair haill moveabill guidis, gif thay ony haif, to be escheit to his Maiesteis vse, &c.⁴

Egiptians—Sorners, &c. (Females.)

Jan. 29.—HELENE FAA, the relict of vmq^{le} Capitane Johnne Faa; Lucrece Faa, spous to James Broun; Elspeth Faa, brether-dochter to the Capitane; Katharene Faa, relict of vmq^{le} Eduard Faa;

¹ Proved; established.

² The remainder are burgesses of Edinburgh. James Hopper of Bourhouffis, the Laird of Coulter-Cuming, Ogilvie of Boyne, Maxwell of Cowhill, and six others, ('mercheandis,') are 'vnlawit 100 merkis ilk ane of thame.'

³ Preceding.

⁴ See the following article, Jan. 29, and Mar. 22, where the proceedings against their helpless widows are recorded.

Meriore Faa, spous to James Faa; Jeane Faa, the relict of vmq^{le} Andro Faa; Helene Faa, the relict of vmq^{le} Robert Campbell; Margaret Faa, dochter to vmq^{le} Eduard Faa; Iffobell Faa, the relict of vmq^{le} Robert Broun; Margaret Val-lantyne, relict of Johnne Wilfoun; Elspeth Faa, dochter to vmq^{le} Henrie Faa.

Dilaitit for contravening the 13 Act of his Maiefteis tuentie Parliament, haldin at Edinburgh, the 24 of Junij, 1609 yeiris, maid aganis EGIPTIANIS, chargeing thame, alsweill wemen as men, to pas furth of this kingdome, and to remane perpetuallie furth thair of; and nevir to be fundin within the famyn, eftir the first day of Auguft thaireftir, in the said yeir of God 1609, vnder the pane of deid: And the foirnamet perfones, being all Theves, Vagaboundis, and Egiptianis, fa repute and haldin, and tane as people of that vnhappie race and focietie, hes, be thair remaning within this kingdome eftir the tyme foirfaid, appointit for thair away-paffing furth thair of, contravenit the tennour of the said Act of Parliament, and incurrit the pwneifchment aboue writtin, mentionet thairintill.

VERDICT. Giltie, culpable, and convict of the contravening of the foirfaid Act of Parliament.—SENTENCE. To be tane to the place of thair executioun, in fome convenient pairt, and thair to be DROWNED quhill thay be deid; and all thair moveabill guidis, gif thay ony haif, to be confiscat to his Maiefteis vse, &c.

(Mar. 22.)—THE above perfons, together with ALEXANDER FAA, fone to Eduard Faa, JOHNNE FAA and FRANCIE FAA, fones to vmq^{le} Capitane Johnne Faa, and HARIE BROUN, brother to vmq^{le} Robert Broun, being brocht furth of waird, and presentit of new agane vpone pannell, as thay that war convict of EGIPTIANES, and the Dome of daith pronuncet aganis elleivin of thame, vpone the xxix day of Januar laft, the executioun quhairof was superceidit, be the Lordis of Secreit Counfallis Warrant and directioun, vnto the tyme our fouerane Lordis will and pleafour war knawin thairanent.

HIS MAIESTEIS Letter and Directioun sent to the Counfall.

To our right trustie and right weilbelouit counfalour, SIR GEORGE HAY of Kynfawnes, kny^t, our Chancellor, and to our right trustie and right weilbelouit coufinges and counfalouris, and vtheris our trustie and weilbelouit counfalouris, THE ERLES, LORDIS, and vtheris of our PREVIE COUNSELL, in our kingdome of SCOTLAND.

JAMES R.

RIGHT trustie and right weilbelouit counfalour, right trustie and right weilbelouit coufens and counfalouris, and vtheris our trustie and weilbelouit counfalouris, We greete yow well. We haue vnderftood, by your Letter of the 29 of Januar laft, that a number of these Theeves and counterfooted Vagabondis, commonlie callit EGIPTIANIS, being apprehendit be your directioun, war thereftir put to a Criminall tryell, and being lawfullie convicted, that eight of the men wer executed, and that the rest, being aither childrene and of leffe-age, and wemen with chyld, or geving sucke to childrene, 3e haue therfore committed thair perfones to priffone, superceiding the executione of the Sentence pronounced

aganis thame, till yee should acquaynte ws, and know oure further pleafoure thairanent. In whiche regaird, these are to certefie to yow, that as We allow well of the course taiken for executeing of the men, so now, in colde bloode, (these children and weemen haueing beene soe long kepte prisoneris,) and cheffie in respect of that which yee wryte to be the present estaite of most part of these weemen, We can not bot inclyne to pittie and compassion of them. WHEREFORE, as We ar willing that their lyues be spared, soe that nather thame selues, nor any others of that kynd may be therby emboldned to presume vpon our clemencie, yee shall caus thame act them selues to depairt, with thair childrene, furth of that our kingdome, between and such a competent day as yee shall think fitting, for that effect, to prescriue; vnder the payne of death, to be inflicted (without any forder proces or dome) vpon them, wherfoever they can be apprehendit within our said kingdome, efter the said day. AND for your putting them to libertie, (nochtwithstanding the Sentence pronounced against them,) vpon condition foirsaid, these shalbe vnto yow a Warrant sufficient. And soe We bid yow farewell. FROM our Honour of HAMPTON, the 13 of Merche, 1624.

THE JUSTICE, conforme to his Maiesteis Letter and direction, caufit the haille Egiptianis aboue writtin, presented vpon pannell, act thame selffis, lyk as thay and ilk ane of thame, of there awin frie motiue, and with the blessing of God to his Maiestie and Counfall, become actit and obleift to depairt and pas away with thair childrene furth of this realme; and nevir to be fund thairintill, eftir the tuentie-tua day of Apryle nixtocum, vnder the payne and pwneischment of daith, without ony forther proces or doome, to be inflicted but fauour¹ vpon them, quhairuir thay fall befund or apprehendit, within this kingdome, eftir the said day.

Treasonable and Masterful Theft and Stouthreiff.

Mar. 3.—[DAME MARGARET OGILVIE, COUNTESS OF MARSCHELL,²

SIR ALEXANDER STRAUCHANE of Thornetoun, kny^t, (hir spouse,) and Mr Robert Strauchane, Doctour in Phisik.

Dilaitit of the Maisterfull Thift and Stouthreiff, ffurth of the Place of Benholme, pertening to vmq^{le} GEORGE ERLE MARSCHELL, of certane his Lordschipis jouellis, filuer-plait, houshald-stuff, gold, filuer, euidentis, writtis, and vtheris guidis, at lenth expressit in the criminall Letteris direct thairupoun, at the instance of our souerane lordis Aduocat; committit in October 1622, a littill befor the said Erles deceise.³

PERSEWAR.

Sir Williame Oliphant, kny^t.

PRELOCUTOURIS in defence.

Mr Thomas Hoip, Mr Lueis Stewart.

The persones enterit on pannell takes instrumentis of thair entrie, and protestis for releif of Sir George Afflek of Balmanno of his cautionerie. There was presented the following

WARRANT of the Lordis of Secreit Counfall.

APUD ED^B, *secundo die mensis Marcij*, 1624. THE Lordis of Secreit Counfall, ffor some speciall

¹ Without favour or mercy.

² Daughter of James, *sixth* Lord Ogilvy of Airly. She was the second wife of George, *fifth* Earl Marischal.

³ He died at Dunottar Castle, Apr. 2, 1623, in the seventieth year of his age. He had studied at several foreign Universities, and was an accomplished and learned individual. Besides his Embassy, he had filled the high office of Lord High Commissioner to the Parliament of Scotland, by Commission under the Great Seal, Jun. 6, 1609.

considerationes moveing thame, Ordanes and commandis the Justice, Justice-clerk, and thair deputis, to continew the dyet appointit to DAME MARGARET OGILVIE, COUNTES OF MARSCHELL, Sir Alexander Strauchane of Thornetoun, hir spous, and vtheris perfonas specifeit in the Criminall Letteris raisit pairupoun, ffor pair compeirance befoir pe Justice, vpone the thrid day of Marche instant, to vnderly the Law for the crymes of Thift and Stouth-reiff of the houshald stuf, insight pleniffing, filuer plait, and vtheris goodis pertening to the lait Erle of Merschell, and at lenth specifeit in the saidis criminall letteris raisit at pe instance of his Maiesteis Aduocat, vntill the secund day of Julij nixtocum; takand new caution of pe defenderis, for pair compeirance that day, conforme to the ordour. Quhairanent pe Extract of pis Act fall be vnto pe said Justice, Justice-clerk, and thair deputis, ane sufficient Warrant.

EXTRACTUM de *Libris Actorum Secreti Consilij*, *s. d. n. Regis*, &c. JACOBUS PRYMROIS.

Sir George Afflek of new becomes cautioner for the saidis Dame Margaret, &c., vnder the panes contenit in the Actis of Parliament.

[*Mr Alexander Coluile of Blair, Justice-Depute.*]

(Jul. 2.)—ANOTHER Warrant, dated ‘at Halyrudhous, the first day of July’—and signed by ‘Geo. Cancell^s. Mar. Morton. Linlithgow. Melros. Lauderdale. Aw. Carnegie’—directs the case to be continued ‘vntill the xxvij of July instant, vpone new caution:’—‘And that yow dispens with the personall compeirance of the Lady Marschell and Doctour Strauchane.’

(Jul. 27.)—A THIRD Warrant, dated ‘at Halyrudhous, the xxij of July,’ and subscribed, ‘Geo. Cancell^s. Mar. Melrois. Lauderdale. J. Kokburne. Kilsayth.’—David Levingstoun of Donypace becomes cautioner for their entry on the aucht day of December nixt.

(Dec. 8.)—No procedure is entered in the Record of this date.

[*Sir George Erskine of Innerteill, kny^t, Justice.*]

Treasonable and Masterful Theft, &c.

Mar. 3.—JAMES KEITH of Benholme.

Dilaitit of airt and pairt of the treffonabill¹ and theftious steilling, be way of Maisterfull-thift and Stouth-reiff, in the moneth of October, 1622 yeiris, furth of the Place of Benholme, off ane grene coffer, pertening to vmq^{le} GEORGE ERLE MARSCHELL, with the jowellis and vtheris vnder writtin being thairintill, als pertening to his lordschip, viz. of Portugall ducattis, and vtheris spaces² of foreigne gold, to the avail³ of tuentie thowfand pundis, or thairby; threttie-fax duffane of gold buttones; ane ritche jowell, all set with dyamontis, quhilk the said vmq^{le} Erle reffaut as ane gift gevin to him the tyme he was Ambassadour in Denmark, worth sex thowfand merkis; the Quene of Denmarkis pictour in gold, set about with ritche dyamontis, estimat to fyve thowfand merkis; ane jasp stane for

¹ *Treasonable*, as being committed by a landed Gentleman, in terms of an Act of Jac. VI. ² *Species*. ³ *Worth; value*.

stemming of bluid,¹ estimat to fyve hundreth French crownes; ane chenzie² of equall perle, quhairin was foure hundreth perles gritt and small; tua chenzeis of gold, of tuentie-foure vnce wecht; ane vther jowall of dyamontis set in gold, worth thre thousand merkis; ane grit pair of bracelettis, all sett with dyamondis, pryce thair of fyve hundreth crownes; the vther pair of gold bracelettis, at sex hundreth pundis the pair; ane turcas³ ring, worth ten French crownes; ane dyamond set in ane ring, price xxviij French crownes; with ane number of vther small ringis, set with dyamondis and vtheris ritche stanes in gold, worth thre hundreth Frenche crownes; mair, sextene thousand merkis of siluer and gold, reddie cunzeit,⁴ quhilk was within the said grene coffer; togidder with the haill Tapestry, siluer-work, bedding, and vther guidis, geir, and pleniffing, being within the said Place, particulierlie specifieit and set down in the Criminall Letteris direct aganis the said James Keyth of Benholme and his complices.⁵ AS ALSO, for airt and pairt of the thiftious steilling and away-taking, be way of maisterfull Thift and Stouthereiff, in the moneth and yeir of God foirsaid, furth of the said Place, of ane grit clothe bag, with the said vmq^{le} Erle his haill eidentis⁶ and writtis of his landis and leving of Benholme, and vtheris his landis and barroneis, being thairintill; and remanent capitall crymes contenit in the saidis Criminall Letteris, &c.

Andro Barclay of Vnthank, as cautioner, is decernit and ordanit to be in ane amerciament, viz. for nocht entrie of the said James Keyth, in the pane and vnlaw of ane thousand merkis: And siclyk, that the said James be denuncet our souerane lordis rebell, and put to his hienes horne; and his haill moveabill guidis to be escheit and inbrocht to his Maiesteis vse, as fugitiue fra his hienes lawis for the saidis crymes.

Stealing Corn, &c.

Mar. 24.—HARIE MENTEITH of Pansteid; James and Williame, his tua sones; Andro Menteith, sone-naturall to the said Harie; Johnne Menteith, callit of Balderstoun; and fix others.

Dilaitit of the thiftious steilling and away-taking, furth of Thomas Kincaid of Wariestoun his barnes of Saltcoittis, in the Eist-Kerfe, lyand in the barrony

¹ Various virtues were anciently attributed to certain precious stones, such as the present, (*stemming* of blood,) as antidotes against poison, &c. The following curious entry occurs in the Books of the Lord High Treasurer of Scotland, Feb. 9, 1504.—‘ITEM, to the said Williame [Foular, potingary,] for ANE BLUDESTANE, and thre vnce vpir stuf, for THE QUENE, for bleding of þe nefe; eftir ane R. (recipe) of Maister Robert Schaw, xxij s.’

² Chain, or string.

³ Turquois.

⁴ Ready

coined. ⁵ The above highly interesting detail shows, in a very striking point of view, the immense wealth which was accumulated and enjoyed by many of the Scottish Nobility at this period. Other portions of this Collection prove that considerable riches were possessed by some of the smaller Gentry, where such a display might not have been expected. ⁶ Title-deeds.

thairof, and fcherefdome of Sterling, off threttie bollis of aittis, faxtene bollis of peis, and tuentie bollis beir, pertening to the faid Thomas Kincaid.

The perfewar producet our fouerane lordis Letteris, be vertew quhairof the faidis perfones, and ilk ane of thame, ar denuncet rebellis, and put to the horne, for nocht finding of caution to haif compeirit, &c.; and protestit for relief of Johnne Kincaid portioner of Gogar, his cautioner.

[*Mr Alexander Coluile of Blair, Justice-Depute.*]

Murder.

Jun. 5.—JAMES GALBRAITH, in Lekkies.

Dilaitit of the Murthour and Slauchter of vmq^{le} James Broke in Kirkpatrik, his brother-in-law; committit vnder nycht, betuix Kirklistoun and Corstorphin, in thair cuming furth the hie-way togidder towardis Edinburgh, in the moneth of Apryle last, in the begynning thairof.

ASSISA.

James Tennent of Lynhous,
Johnne McFarlane of Arrochar,

James Burnet of Barnes,
Alexander Lokhart of Braidshaw.¹

The pannell confessis, in presens and audience of the Affyse, the Murthour and Slauchter contenit in his Dittay.

VERDICT. The Affyse being ryplie and at lenth advyset with the Dittay, togidder with the faid James Galbraith his awin Confessioun maid in judgement, with his Depositoun maid be him, vpone the thrid day of Junij instant, in presens of the haill lordis of Counsell and Sessioun, confessing the Murthour aboue writtin, thay all in ane voce ffand, pronuncet, and declairit the faid James to be ffylet, culpable, and convict.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair his heid to be strukin frome his body; and his haill guidis and geir to be escheit, &c.

Theft—Slaughter—Fire-raising—Intercommuning with the MacGregors, &c.

Jul. 17.—JOHNNE ROY MCFARLANE, sone to Andro of Gortane, and others.²

Dilaitit of the feuerall crymes of Thift and Slauchter following, viz. The faid *Johnne Roy McFarlane*, ffor airt and pairt of the Slauchter of vmq^{le} Williame Mcclane in Blairvak, servand to vmq^{le} Duncane McFarlane of Blairvak, for the tyme; committit vpone the thrid day of October lastbypast, 1623 yeiris: And

¹ The rest of the Assise were tradesmen. James Tennent, chancellor. ² The remainder of the pannells were, 'Johnne Beg McCauike McFarlane (in Stukewa), Duncane McCorrie McEwin (McFarlane in Ardlowie), Johnne McInnair McFarlane in Garboyle, Thomas Moir McFarlane, (sone to Duncane Dow McFarlane in Morlagane,) Allaster Blair (in Brachairne), Johnne (Dow) Blair, his sone, Johnne Gar McGilliemichell, (servitour to Robert Abroche McGregour,) Duncane Bayne McCartnay, (servand to Robert Abroche McGregour.)'

ficlyk, for airt and pairt of the treffonable Raifing of ffyre, and Burning of the houle of Abervrchill, pertening to vmq^{le} Colene Campbell of Abervrchill, being in company with Johnne Dow M^cCondochie Bayne, his maifter, and vtheris his complices, at the faid Burning; committit a ten yeir fyne, or thairby. ITEM, the faid *Johnne Beg M^cCauife M^cfarlane*, ffor the thiftious reffetting of ane blak kow, quhilk was ftowin be Johnne Roy M^cWilliame M^cfarlane, furth of the landis of Balliemoir, fra Andro M^cWilliame M^cfarlane, in the moneth of December laft: And ficlyk, for airt and pairt of the fteilling of tua ky furth of the landis of Clofwrak, pertening to Callum M^cfarlane, indueller thair: And alfe, for airt and pairt of the thiftious fteilling, at the leift reffetting, of ane blak horfe, ftowin be Duncane M^ccorriche M^ceane M^cfarlane, furth of the cuntrie of Argyle; committit in Marche laft. ITEM, the faid *Duncane M^ccorrie M^ceane M^cfarlane*, ffor airt, pairt, and being in company with Johnne Roy M^cWilliame M^cfarlane, at the fteilling of ane broun kow, a four yeir fyne, or thairby: And for airt and pairt of the fteilling of nyne lambes, pertening to Johnne M^ccorrie M^cfarlane and Patrik M^ccorrie M^cfarlane in Ardmulrig, furth of the Mure of Ben-Mourlig, in the moneth of Junij I^m.Vj^c.xxij yeiris: And alfo, for airt and pairt of the fteilling of ane gait¹ furth of the landis of Glencroe, in the moneth of October, the yeir of God I^m.Vj^c. tuentie tua yeiris: And in lyk maner, for airt and pairt of the fteilling of ane blak horfe out of Argyle, in the moneth of Merche laftbypaft: And for thiftious fteilling of ane fcheip fra vmq^{le} Malcolme M^cfarlane, in Innerfnamet,² in the moneth of Julij, 1616 yeiris. ITEM, the faid *Johnne M^cInnair M^cfarlane*, ffor airt and pairt of the fteilling of ane broun kow furth of the landis of Glencroe, furth of ane grit number of vther ky, in dryveing thame to the Mercat, to be fauld; committit a fevin yeir fyne, or thairby: And ffor airt and pairt of the fteilling of ane blak kow, a four yeir fyne, furth of the faidis landis of Glencroe. ITEM, the faid *Thomas Moir M^cfarlane*, fone to Duncane Dow, ffor airt and pairt of the fteilling of fyve ky, pertening to George Maidlanes in Letter, and vtheris, the Laird of Kilfythes tennentis: And ffor airt and pairt of the fteilling of nyne lambes, furth of Craigoftane,³ pertening to Patrik Glas M^cfarlane thair, in the moneth of Junij, 1623 yeiris: And ffor airt and pairt of the thiftious reffetting of ane ftowin kow, quhilk was ftowin be Callum M^ccauife in Clakbowie, fra Colene Campbell of Ardkinglas, in the moneth of November, 1622 yeiris: And ffor ane commoun foirner⁴ and oppreffour, vpone dyuerfe his Maieftis fubjectis: And for common Thift and Reffet of thift. ITEM, the faidis *Allaſter Blair* in Bracherie, and *Johnne Blair*, his fone, ffor airt and pairt of the fteilling of foure ky, furth of the landis of Diſcher, in Menteith, a

¹ Goat.² Inversnaid?³ Afterwards the residence of Rob Roy M^cGregor, who acquired

this property in anno 1705.

⁴ One who oppressively takes free quarters, &c. by violence.

fyve yeir fyne, or thairby, quhilk pertenit to Logane, fervand to the Laird of Auchinbrek. ITEM, the said *Allaster*, ffor the steilling of tua oxin fra the Laird of Buchannane, furth of the landis of Salloche, a fyve yeir fyne, or thairby. ITEM, the saidis *Allaster*, and *Johnne Dow Blair*, his sone, ffor the thiftious steilling of thre ky, furth of the landis of Drongie, pertening to Robert Campbell of Drongie, a foure yeir fyne, or thairby: And forder, for the thiftious recept¹ of tua stowin horse, stowin be the said Robert Abroche, furth of the North pairtis of this realme, a yeir fyne, or thairby. ITEM, the said *Allaster*, ffor the thiftious reffetting of ane grit quantitie of the guidis and geir reft, stowin, and away-tane furth of Balwill, be Robert Abroche, Johnne M'cairtour, Donald Darleith, and vtheris thair complices, quhilkis pertenit to Johnne Fallasdaill, bailzie of Dunbartane: And last, the said *Johnne Blair*, ffor steilling of ane kow, furth of the landis of Clofrak, pertening to Parlen M'neill, thair, a foure yeir fyne, or thairby. ITEM, the said *Johnne Gar M'gilliemichell*, ffor airt and pairt of the thiftious steilling, be way of Maisterfull Thift and Stouth-reiff, furth of Murray, in the North, fra dyuerse of the Inhabitantis thairof, in the moneth of Julij last, of ffyftie ffyve oxin and ky, with dyuerse horse, scheip, gait, inficht and pleniffing, quhilk war drewin² be the said Johnne Gar, and be Robert Abroche, his maister, and vtheris thair complices, to the Wast pairtis of this realme, quhair the samyn was fauld and disponit vpon to thair vse: And siclyk, for ane commoun Soirner and Oppressour, in keiping daylie and nychtlie company with Robert Abroche M'gregour, and passing with him throw dyuerse pairtis of the cuntrie, soirning and committing oppressioun vpon dyuerse his Maiesteis subiectis, inhabitantis thairintill; forceing and compelling thame to furneise meit, drink, and vther prouisioun, aganis thair will, and without payment of ony money for the fame; in hie and manifest contempt of his Maiesteis auctoritie and lawis. ITEM, the said *Duncane Bayne M'cartnay*, ffor ane commoun Soirner and Oppressour; speciallie, for cuming to the duelling-hous of Neill M'claren in Innernandie, in the heid of Balquhidder, in May last, and thair forcet and compellit him to furneise to the said Duncane, meit, drink, and vtheris necessaris; and becaus ane kid was refuifet be the said Neill to be flane and eittan, at the said Duncanes desyre, the said Duncane thairupoun maist crewallie invaidit the said Neill for his slauchter, gaif him ane crewall and deidlie wound in the heid, to the effusioun of his bluid in grit quantitie; quha, be occasioun of the said straik, being irritat with rage and furie, with ane grit caber³ in his hand, rynnand at the said Duncane in revenge thairof, strak Donald M'Intyre (quha was ane redder⁴) in

¹ Reset. ² Driven. ³ A large rafter, beam, or joist. ⁴ A peace-maker, who, in this instance, got the *redding-straik*, the proverbial recompense of those who, through their good nature, endeavour to separate angry combatants. The foregoing details afford a highly unfavourable picture of the state of society, in 'Rob Roy's country,' at the close of the reign of James VI.

the foirheid, and fellit and flew him thairwith; and sa, the said Duncane was airt and pairt of the Slauchter of the said vmq^{le} Donald M^cIntyre: ITEM, ffor cuming to the said Neill M^cclarens hous, vnder nycht, and steilling furth thair of of his haill inficht pleniffing, guidis, and geir, to the availl of fourtie pundis money.

The foirnamet haill perfonas, dilaitit and accuset of the crymes *respectiue* above writtin, haifing denyit the samyn to be of verritie, war put be the Justice to the knowlege of the perfonas following.

ASSISA.

Johnne M ^c farlane of Arrochar,	Duncane M ^c Innoyer in Gortane,	Parlane M ^c Corrie in Ardleisch,
James Garbraithe in Garbell,	Patrik Roy M ^c Innoyer,	Patrik M ^c farlane in Pullochre,
Dougall M ^c farlane in Tullichin-	Andro M ^c farlane in Drumfad,	Johnne Dow M ^c farlane,
taill,	Malcolme M ^c Williamie in Downe,	Donald Dow M ^c farlane,
Thomas M ^c farlane,	Duncane M ^c farlane in Port-	Harie Dow, seruitour to Johnne
Johnne M ^c farlane in Kenmore,	Chapell,	Erll of Mar, &c.
Duncane M ^c farlane, thair,	Johnne M ^c Innoyer,	

VERDICT. The Assyse, all in ane voce, be the repourt and declaratioun of the said Andro M^cfarlane in Drumfad, chancellor, fand the saidis perfonas on pannell, and ilk ane of thame, to be ffylet, culpable, and convict of the feuerall crymes aboue writtin.—SENTENCE. To be tane to the Burrow-mure of the burgh of Edinburgh, and thair to be Hangit quhill thay be deid; and all thair moveable guidis to be escheit to his Maiesteis vse, as giltie of the saidis crymes.

Sheep and Cattle Stealing, &c.

Jul. 21.—ADIE VSCHER, borne in Birkinhauch, in Liddisdail, fervand to Robert Ellote of Reidheuche.

Dilaitit of airt and pairt of the steilling of sex ky (*cattle*) furth of Schewingscheill-Castell, pertening to Williame Heroun of Chipchese, in the moneth of November last: ITEM, ffor airt and pairt of the steilling of sextene gaitis (*goats*) furth of Emmetishauch, pertening to Will Charletoun of Emmetishaugh; Will Vscher, his sone, being in cumpany with him at the steilling thair of; committit in September last: ITEM, ffor airt and pairt of the steilling of tua ky furth of Hafilsyde, in Ingland, the ane blak, the vther broun, pertening to Williame Chairletoun of Hafilsyde; committit be him and the said Will Vscher, his sone, in October last: ITEM, ffor airt and pairt of the steilling of an yellow brandit ox, furth of the landis of Heifilefyde, in the said moneth of October last, pertening to the said Will Chairletoun; the said Will Vscher, his sone, being in companie with him at the committing thair of: ITEM, ffor airt and pairt of the steilling of sextene gaittis furth of the landis of Leipieleische, in October last; quhilk pertenit to Mathew Robfoun of Leipieleische; the said Will, his sone, being with him at the steilling thair of: ITEM, ffor steilling and away-taking, about Hallowmes last, of tua schein

furth of Richartoun-fute, pertening to Archie Henderfoun, and Johnne Robiefoun, thair; committit be him and the said Will, his sone: ITEM, ffor airt and pairt of the steilling, furth of Burnemouth, of fyve scheip, pertening to Johnne Nixyne, thair; the said Will Vscher being at the steilling thairof: LAST, ffor airt and pairt of the steilling of ffyve scheip, about St Thomas-Evin laft, fra Johnne Ellote, callit *the Dod*, and Johnne Elliot, callit *the Gyde*: AND ffor commoun Thift and Refset of Thift.

PERSEWARIS, Mr (Williame) Heroun of Chipchefe, Will Chairletoun of Hiffiesyde, Sir Williame Oliphant of Newtoun, kny^t, Aduocat.

ASSISA.

The Laird of Riddell,	Ragnell (Reginald?) Bennell,	Johnne Govane of Cardrono,
Williame Middlemest of Chapell,	The Laird of Mertoun,	James Douglas of Cowthroppill.
George Ker of Newhall,	Andro Ker of Brounlandis,	Patrik Cranftoun of Corfbie,
Andro Douglas of Priesttoun,	W ^m Trumble of Phillopehauche,	Robert Edger of Wodderlie,
Williame Bennet,	James Nayfmyth of Poffo,	Robert Lauder of that Ilk.

VERDICT. The Assyse, all in ane voce, in respect of the said Adie his Judicial Confessioun of the crymes foirfaidis to be of verritie, be the mouth of the said Laird of Riddell, chancellor, ffand, pronuncet, and declairit the said Adie Vscher to be ffylet, culpable, and convict of the crymes foirfaidis.—SENTENCE. To be tane to the Burrow-mure of Edinburgh, and thair to be Hangit quhill he be deid; and all his moveabill guidis to be escheit, &c.

Sheep and Cattle Stealing, &c.

Jul. 21.—WILL VSCHER, sone to the said Adie Vscher.

Being presentit vpone pannell, in prefens of my Lord Justice, Confessit him selff to be Giltie and culpable of the particular Thiftis contenit in his ffatheris convictioun: And offerit him selff in his Maiestie and Counfallis will for the samyn.—SENTENCE. The Justice, in regaird of the said Will Vscher his minoritie, nocht being past saxtene yeiris of age, with advyse of the Lordis of Secreit Counfall, ordanit the said Will to be Baneischet his Maiesteis hail dominions, and nocht to be ffund thairintill in ony tyme cuming, without his Maiesteis Licence, vnder the pane of deid, &c.

[*Sir George Erskine of Innerteill, kny^t, Justice.*]

Murder under trust—Stouthreis—Piracy, &c.

Nov. 3.—JOHNNE BROUN, skipper in Brunteilland; Robert Broun, mariner, his sone, thair; Daid Dowie, burges and awner thair; and Robert Duff, in South Quenis-fferrie.

Dilaitit and accuset of airt and pairt of the schamefull, crewall, and vnmerciefull Murthour vnder trust of thre Spanische mercheand young men; and steilling

and appropriating to thame felffis, be way of Maisterfull Thift, Southe-reiff, and Peiracie, off the guidis and mercheandice being within thair fchipis-boddome, pertening to the faidis Mercheandis ; committit a thre yeir fyne, or thairby, in thair cuming fra the Poirt of St Johnnes, in Spayne, to Callife, be casting the faidis thre Spanifche Mercheandis over-burde, and thaireftir appropriating of thair guidis and mercheandice to thame felffis, and making money thairof, to thair awin vfe.

PERSEWAR, Sir Williame Oliphant of Newtoun, kny^t, Aduocat.

DITTAY against the persons on pannell.

JOHNNE BROUN, skipper in Bruntieland, maister and owner of ane quarter of the fchip vnderwritten, ROBERT BROUN, your fone, awner of ane vther quarter thairof ; DAVID DOWIE, mariner, burges of Bruntieland, awner of the half thairof ; and ROBERT DUFF, indueller and mariner in South Quenifferrie, YE ar indytit and accuset, FORSAMEKILL AS the traffique and commerce betuix mercheand and mercheand, in expoirting of commoditeis frome ane cantrie to ane vther, hes, in all weill-governet Kingdomes and Commoun welthis, bene estimat the ground and fundamentall caus, nocht only of grit welth and ritches to the inhabitantis, but also ane grit help and furtherance to intertene freindschip and correspondence betuix Princes ; quhairthrow mony loveabill Lawis, vpone guid advyse and deliberatioun, hes bene publeift and fet furth be thame and thair estaitis, for advancement of thair tred, and reiking out of fchipis and veschellis for the better vphald and continuance thairof ; and thairupoun, the art of Nauigatioun, with the perfones expert thairintill, alfweill for thair skill and dexteritie in failling, as fidelitie in that tred, be the faif convoying of the merchandis and passangeris, with thair merchandice and guidis, committit to thair trust, hes becum famous and of goode estimatioun throw the hail world : LYK AS, the failleris of this Kingdome, being, for thair skill and fidelitie in that tred, nathing inferiour to ony vther cuntrie, people, or natioun, haif commonlie, in regaird thairof, bene fa respectit be strangeris in forayne pairtis, that thay, with thair fchipis, hes bene preferrit in seruice to ony vther people quhatfumeuir. Nochtwithftanding quhairrof, it is of verritie, that ye and ilk ane of yow, fchaiking of all feir of the Omnipotent and Almychtie God, regaird to the ancient goode fame of this cuntrie and kingdome of Scotland, quhairrof ye ar namet maist vnworthlie to be inhabitantis and natiue borne people ; as also, to the grit obloquy, fchame and reproche, and oppin discredeit of the hail failleris of this kingdome resoirting to fforayne pairtis, prejudice and disapointing of all lauchfull commerce and tred with ony of the Mercheandis of the famyn, and imployment of the hail feafairing men with thair fchipis and barkis in tyme cuming, a thre yeir fyne or thairby, ye being in St Johnnes, a Sie-poirt within the Kingdome and dominioun of Spayne, togidder with the fchip callit, quhairrof ye, the faid Johnne Broun, was maister and awner of ane quarter, and ye, the faid David Dowie, awner of ane half, and ye, the faid Robert Broun, awner of the fourt quarter ; and being fraughted be ane Gilzeane Thasktone, a Spanzaird, to pas fra the faid Poirt of St Johnnes to the Poirt of Caillife, with ane laiding of Walnuttis, cheftanis,¹ and certane Spanifche irne ; and accoirding thairto, haifing tane in the faid laiding, togidder with thre Spanifche young men, quha war directed be the faid Mercheand to await vpone the difcharge of the faid Merchandice, and to make mony thairof at the faid fchipis arryvell at hir appointit Poirt aboue writtin,² ye, befoir your cuming abuid of the faid fchip in St Johnnes, plottit, contrivet, and devyset the crewall and barbarous Murthour of the faidis thre strangeris, and the appropriating to your felffis of the hail guidis and merchandice imput within the faid fchip ; and drew vp ane Band to that effect, quhairvnto ilk ane of yow, with the remanent equippage of the faid fchip put to your handis ; and thaireftir, cuming all aboird, heafit vp faill, and past to the Sea : And being in the middis of Sea, far frae ony land, ye, vpone fchamefull and damnable greid and covetousnes, vpone fet

¹ Chestnuts.

² As supercargoes.

purpois, deliberatioun, and ffoirthocht ffellony, fulifchilie apprehending that the al-feing eie of the Almychtie did nocht luik down, nor wald bring to licht your maift horrible and detestable Murthour and Pirracie, ye being alfo fecundit, aidit, and affistit be James Hall in Kirkculdbrycht, Johnne Gibfoun in the Erles-fferrie, James Carrane in Tradache, in Ireland, Robert Kincavill, cuik of the fchip, with ane Irifche boy, namet Thomas Cur; all of yow, being nyne in number, within fchip-buird, ye maift crewallie and vnnaturallie, aganis the Lawis of Nationes, haifing the faidis thre ftrangeris in your power, and for the vnlauchfull acqyreing and appropriating to your felffis of the faidis guidis and merchandice, violentlie, and but¹ pitie or commiferatioun, threw them all thre ouerbuid, ane eftir vther, in the raging seas; and thairby crewallie and vnmerciefullie, vnder trust, credeit, and affurance, Murdreift and bereft thame of thair naturall lyves; thay haifing na refudge nor bak-dur to efchew your crewaltie: Quhilk being done, ye, in plane mokage² and fkorne of the Almychtie, as gif his devyne Maieftie had approvin that your horrible fact, maid ane Prayer, and fang vp ane Pfalme: And thaireftir, as Thevis and maifterfull Sea-robberis, divertit your curfe fra Callife,³ and pafst with your faid fchip and laiding thair of to Myddilburgh in Zeilland, quhair the faidis walnuttis and cheftanes war fauld and maid money of, be ane or vther of yow, in name and to the behuif of the haill company and equippage;⁴ and the famyn money, thaireftir, was pairtit amangis yow: Lyk as, the irne was brocht hame to Brvntieland, quhair the famyn was fauld, for reddie money.—Committing thairby maift horrible Murthour and Slauchter vnder trust and credeit, the faidis thre ftrangeris being vnder your power and command, within your fchip; and lykwayis Maifterfull Thift, Stouthe-reiff and Pirracie, in appropriating of thair guidis and mercheandice to your felffis: Off the qnhilkis, ye, and ilk ane of yow, ar and war fpeciall actouris, airt and pairt; and thairfoir, aucht and fould, in maift exemplarie maner, be pwneift, to the terrour of vtheris.

My lord Aduocat, eftir reiding of the Dittay, and the pannellis accusatioun of the faidis crymes, at length fet down thairintill; and that in respect na obiectioun was maid be the pannell or ony vtheris in thair names, aganis the relevancie thair of, defyret my lord Justice to put the famyn to the tryell of ane Affyfe of the perfones fummond to that effect.

My lord Aduocat takis instrumentis of the fweiring and admiiffioun of the Affyfe, and that na obiectioun is maid aganis thame be the pannell. And for Verificatioun of the poyntis of Dittay and crymes thairin mentionet, producet the Depofitioun maid be the foure perfones on pannell, viz. the faid Johnne Broun, Robert Broun, and Daud Doweis Depofitiones, maid be thame in prefens of the Laird of Bombie, the Commiffar of Kirkculdbrycht, and the Bailleis thair of, vpone the xxviij day of Auguft laft, confeffing the Murthour and thiftious taking and appropriating of the guidis and mercheandice to thame felffis. Togidder with the faid Johnne Broun and Daud Doweis Depofitioun, tane in prefence of the Erle of Melrois, vpone the xv of September laft. Produces alfo the Depofitiones of Robert Duff, tane in prefens of the faid Erle of Melrois, on the vij day October laft, beirand the faid Johnne Broun, and Daud Dowie, to be cafters of the firft Mercheand overburd. Produces the pannellis haill Depofitiones maid be thame in prefens of my Lord of Melrois, vpone the nynt day of October laft. Togidder with the Depofitioun of Robert Kincavill, cuik of the fchip, and ane of

¹ Without.² Mockery.³ Calais.⁴ Crew.

the equippage thair of in that veadge,¹ tane in prefens of James Weymes of Bogy, Vice-Admirall at Kirkcaldie, vpone the 28 of Junij laft. With the Depofitioun of the faid Robert Duff, maid in prefens of my lord Aduocat him felff, vpone the 27 of October laft. And laft, vfes and produces the Declaratioun of Robert Meluill and Robert Cellok, vnder thair hand-writt and mark put thairto, detecting and oppening vp the pannellis giltienes of the haill poyntis contenit in thair Indytement. And vpone the production of the verifications aboue writtin, askit instrumentis: And proteftit for Wilfull-Errour aganis the perfones of Affyfe, gif thay acquit the pannell of the deteftable crymes aboue written.

VERDICT. The Affyfe, all in ane voce, be the repourt and declaratioun of Stewin Philp, elder, mercheand in Dyfert, chancellor, ffand, pronuncet, and declairit the haill foure perfones on pannell to be Giltie, culpable, and convict of the crymes aboue fpecifeit.—SENTENCE. To be tane to the Mercat-Croce of Edinburgh, and thair to be Hangit vpone ane gibbet, quhill thay be deid: And thaireftir, thair heidis to be ftrukin fra thair bodeyis: And tua of them to be fet vp vpone prikis of irne at *Leith*; and the vther tua to be fent to *Brunteiland*, to be fet vp vpone prikis thair: And thair haill moveabill guidis to be efcheit to his Maiefteis vfe.

[*Mr Alexander Coluile, Justice-Depute.*]

Murder, &c.

Nov. 13.—HARIE LISTOUN, indueller in the bak of Pleafance (of Edinburgh), callit the Bak-Raw.

Dilaitit, fforfamekill as the faid Harie, haifing, without ony juft caus, confaует ane deidlie haitrent and evill will againft vmq^{le} James Mayne, feruitour to Robirt Young, maltman, burges of Edinburghe, with ane fettillit purpois and refolution to bareiff him of his lyffe, be on meine or vther; laitlie, vpone the laft day of Auguft laftbypaft, come in the twielicht, eftir fetting of the fone, betuix fevin and aucht houris at evin or thairby, to the faid Robert Young, his peife-land, befyde the Seanis,² near to the Burrow-mure of the faid burgh, quhair the faid vmq^{le} James was in fober and quyet maner for the tyme, keiping his faid maifteris peife, and vtheris his coirnes, than growand and ftanding ftoukit³ vpone the ground of the faidis landis; and thair, the faid Harie, being bodin with ane grit rung or battone in his hand, and with knyves and vtheris invafive wappones, firft vpbraidit the faid James Mayne with woirdis, alledging that he was ane commoun Theiff, and had ftowin ane grit number of the faid Harie his beanes and peife, growand neir to the faid Robert Youngis land, and lyand contigue

¹ One of the crew in that voyage.

² Sciennes, so called from a religious house dedicated to St Katherine of Sienna, in the immediate vicinity of Edinburgh.

³ Cut down and put up in stouks, ricks, or shocks.

thairto ; and thaireftir, becaus the faid James purget him felff of that calumnie, and anfuerit him, be woird, that he was als honeft as him felff ; the faid Harie, thairupoun, ran vpone the faid James, and rwfchet him (being ane aget man of threfcoir fourtene yeiris of age) to the grund, dang him in the heid, craig,¹ fchoulderis, and fydis with the faid battoun, lap vpone his breift and bellie with his feit and kneysis, punchet him as alfo vpone the heart, and thairby brak and birfet his intrallis and noble pairtis ; in maift insolent maner cuttit his cleithing in peices with knyves, and thaireftir harrellit and drew him be the heillis the fpace of ane quarter of ane myle af the faidis landis, to ane laich volt in S^t Geillie Grange, and impriffonet him thairintill, *tanquam in privato carcere*, he being in the deid-thraw :² Lyk as, within thre houris efter his imputing within the faid volt, he deceiffit of the faidis ftraikis : And the faid Harie, vnderftanding of his daith, to fuppres the Murthour of the faid pur man fra the warld, caufit him to be bureit fecreitlie in the nycht, in ane obfcure place. And fa, the faid vmq^{le} James Mayne was fchamefullie, crewallie, and barbarufflie Murthouret, and thairefter fecreitlie bureit, be the faid Harie and his complices ; and he is airt and pairt thairof ; committit vpone fet purpois, prouifoun, and foirthocht felony.

PERSEWARIS.

Jonet Watsoun, the relict ; Euphame Cuninghame, fifter-dochter ;³ Sir Williame Oliphant, knycht ; Robert Young, as maifter.

PRELOCUTOURIS in defence.

The Laird of Innerleyth, The Laird of Lugtoun, Mr Lueis Stewart, and Mr Johnne Oliphant, Aduocatis.

It is allegit be the pannell, and be Mr Lueis Stewart, his prelocutour, eftir reiding of the Dittay, that the famyn is nawayis relevant to pas to the knowlege of ane Affyse, as it is fett doun ; nawayis affirmeing thairin, that the pannell was the actuall committer of the flauchter lybellit ; and fua, nocht concludand, *de homine occifo*, the famyn can nocht pas to ane Affyse.—It is anfuerit be my lord Aduocat, the allegeance aucht to be repellit, in refpect of the Dittay beir- and *per expreffum*, that the defunct reffauit dyuerfe ftraikis with ane battoun in the heid, and was punchet in the breift and bellie, and his hail noble pairtis brokin within him ; and be occafoun thairof the defunct deceiffit ; quhilk was gevin to him be the pannell, and that he deceiffit off the famyn ftraikis gevin to him be the pannell, the tyme lybellit.

It is allegit, that the Dittay contenis dyuerfe and feuerall⁴ memberis, ilk member thairof being ane cryme be the felff, viz. ffirst, that the defunct was ftruken with a battoun : 2. His claithis cuttit with knyves : 3. The defunct was harrellit be the heillis af the landis lybellit, to the Grange : 4. Was caffin in ane laiche volt, *tanquam in privato carcere*, quhairin he was detenit captiue and priffoner ; quhairin, it is affirmet, that the defunct deceiffit : Quhilkis, being feuerall crymes,

¹ Throat ; neck² Half dead ; in the *throes*, or agonies, of death.³ Niece.⁴ Separate.

man (*must*) be discuffit feuerallie. The Aduocat declairis that he conjoynes the haill crymes togidder, and devydis na pairt of the Dittay; and fayis, that the famyn is verrie relevant, as it is fet down, to pas to the knowlege of ane Affyse.

It is allegit be the pannell, that the famyn can nocht pas to ane Affyse, becaus he offeris him to prove, be fufficient Witnesfes present at the bar, that the said James Mayne deceiffit be hanging himselff within ane laiche volt in the Grange, eftir he was committit thairin for fteilling of certane beanis and peife, and eftir he had remanit thairin the fpace of tua or thre houris; quha was brocht thairto, frie of ony hurt or woundis, in ony pairt of his body.—It is anfuerit, aucht to be repellit, in respect the allegiance confifting *in facto*; and gif ony probatioun be tane, it man be proponit to the Affyse, quha, for thair informatioun, may tak the Witnesfes declaratioun, gif thay fall think it expedient, or reject the famyn.¹

THE JUSTICE Ordanis the Dittay to pas to the knowlege of ane Affyse: And the exceptioun proponit be the pannell, anent the defunctis putting handis in him selff, feing it confiftis *in facto*, REMITTIS THE TRYELL THAIROF TO THE ASSYSE; AND THE PROBATIOUN TO BE VSET BEFOIR THAME.

ASSISA.

Mr Johnne Cant of the Grange,	Johnne Stevinfoun, maltman,	Robert Wilfoun, beltmaker,
Johnne Marfchell, burges of Ed ^r ,	Johnne Lowrie, maltman,	James Johnneftoun, maltman,
Adame Marfchell, maltman thair,	Adame Bar, tailgeour,	Frances Stevinfoun, chirurgane,
Johnne Campbell, ftaibler thair,	Robert Moubray, fuordflipper,	Johnne Fluiker, chirurgane,
Johnne Bordland, litfter,	Johnne Ahannay, baxter,	Johnne Clarkfoun, fmyth.

It is allegit be the pannell aganis ffrances Stevinfoun and Johnne fluiker, chirurganes, that nather of thame can be admittit vpone this Affyse, becaus thay haif behavet thame selffis as pairteis, in paffing, at the defyre of the perfewaris, and for guid deid gevin to thame, to the defunctis graiff, fevin dayis eftir his buriall, and taking him vp and fichting the deid corporis, ffor ane pre-

¹ This Case is most important, as being the first on Record, where the Lord Advocate voluntarily admits of WITNESSES being examined before THE ASSISE, in relation to facts arising out of the assertions contained in the Dittay. The practice formerly was for the Advocate, as public prosecutor, previous to framing the Dittay, to examine the pannell and such witnesses as could be obtained, immediately after the commission of the crime, before the Lords of Privy Council, or a Commissioner; and the Declarations, Confessions, and other evidence so produced, were founded upon in Court. They were there held as conclusive, and not liable to be redargued by leading of fresh evidence at the time of the Trial. The want of attention to this circumstance, or rather the ignorance of the ancient mode of procedure in matters Criminal, would induce any one, at first sight, to form a very erroneous estimate of the policy, and more particularly of the administration of our Laws. The notion seems anciently to have been, that it was an act of flagrant contempt in a pannel to dispute the validity of the evidence led before so high a tribunal as that of the Privy Council, and probably in the face of his own repeated Confessions or Declarations, on being examined, previous to trial. The Justice, therefore, repelled any attempt on the part of Counsel for the pannel bringing forward Witnesses in proof of his innocence; until, at length, the voice of the country prevailed, and THE ASSISE WERE MADE JUDGES OF THE LAW AS WELL AS OF THE FACT. It is not a little singular to observe here, that one of the Assise (the very Justice of the Peace in the vault of whose house the alleged suicide took place, and who was afterwards chosen Chancellor of the Assise) is brought forward as the principal evidence, along with three of his servants!

cognitioun in fauouris of this perfewar, anent the tryell of this mater.—It is anfuert be the Aduocat, the allegiance is nawayis relevant to stay thame to be admittit vpon this Affyse; becaus, quatevir was done be thame in raiseing and fichting of the corporis, was done be command of the Bailleis of Edinburghe.

Robert Young, perfewar, being fuorne, gif he has just cause to perfew this Dittay as it is sett doun, declairit, that he has just caus to perfew, vpon this reafone only, becaus he, haifing gottin knowlege of James Maynes daith, and cuming to the Grange to vnderstand the forme thair of, and haifing seane the deid corporis, defyret Mr Johnne Cant to keip him vnbureit quhill the morne at nyne houris, that his wyfe and freindis (nicht) come to fie him; quhilk the said Mr Johnne promeist fould be done; and nochtwithstanding thair of, he was bureit, be the pannellis fervandis, lang befor sex houris in the moirning: And thairfor, in respect of his buriall, secretly, by¹ promeis, he had just caus to perfew the pannell, as gilty of the said James Maynes daith.

The Aduocat takis instrumentis of the fueiring of the Affyse, and of the production of the defunctis claithes be the relict, all cuttit be the pannell, the tyme contenit in the Dittay: And protestis, in caice thay acquit, for Wilfull Errour.—The pannell protestis in the contrair, gif thay ffyle; and that the Witneses may be tryit for preving that the only cause of the defunct his daith proceedit fra his putting violent handis in his awin persone, be his feirfull and crewall hanging him self, and thairby devoiring him self to daith, within ane laich volt of the Grange, pertening to Mr Johnne Cant, ane of the Affyse, eftir the pannell had apprehendit him in his peise, and tane him with tua grit wallat-full of scheillit beanis, stowin be him af his peise-rig, and brocht him to the said Mr Johnne Cant, as Justice of Peace, to haif remanit with him vnto the tyme he had bene tryit and pwneist for the said Thift. And for cleiring of the veritie of the foirsaid allegiance to the said Affyse, defyret the Witneses following, all present at the bar, viz. the said Mr Johnne Cant, ane of the Affyse; Robert Stark, James Scott, and James Wallace, his thre fervandis; James Borthuik, indueller in Edinburghe; James M^cCorne, in the Seanis; Williame Mure, fervand to Robert Young, ane of the perfewaris, and Johnne Girdwoid, also his fervand, to be callit vpon and examinat be the said Affysfouris, eftir thair incloiseing.²

VERDICT. The saidis persones of Affyse thaireftir removet altogidder furth of Court to the Affyse-house, quhair, be pluralitie of voittis, thay electit and chuifet the said Mr Johnne Cant in chancellor: And thaireftir, the saidis hail

¹ Contrary to. ² This seems an extraordinary step. The Assise, *after they are enclosed* in the Assise-house, call before them and examine the Witnesses offered, without the direction of the Judge, or the interrogation of Counsel for either party.

WITNESSES being fuorne and examinat be thame, thay all, but¹ discrepance, cleir-
lie verifeit be thair declarationes, that the said James Mayne come vpone his feit,
without ony hurt, as appeirit, in ony pairt of his body, to the Grange, a littill
afoir sex houris at evin, the day contenit in the Dittay, being brocht thairto be
the pannell, for the cause contenit in his exceptioun; and being put in the laich
volt, at the defyre of the pannell, to be keipit thairin be the said Mr Johnne
Cant, as Justice of Peace, vnto the tyme he war tryit, and that Robert Young,
his master, war brocht to that effect; he, within tua houris thaireftir, the volt
dur being lokit vpone him, was fund hingand in tua horse girthes or coirdes,
deid, and his mouth fameand;² and thairby, that he had devoiret³ him selff. Eftir
quhais tryell and examinatioun, the saidis personis of Assyse reffonit and voittit
vpone the poyntis of the said Dittay, and being ryplie and at lenth advyset thair-
with, togidder with the DEPOSITIONES aboue writtin, maid be the saidis WIT-
NESSES, thay re-enterit agane in court, quhair thay all, in ane voce, be the repoir-
t and declaratioun of the said Mr Johnne Cant, chancellor, ffand, pronuncet, and
declairit the said Harie Listoun to be Cleane, innocent, and acquit of the slauchter
and murthour of the said James Mayne; and of airt and pairt thair of.

Quhairvpoun the said Harie Listoun and his prelocutouris askit instrumentis.

Incest.

Nov. 19.—JAFFRAY IRWING of Robgill.

Dilaitit of the filthie and detestable cryme of Incest; committit be him with
Agnes Cairletoun, spous to vmq^{le} George Irwing of Bonschaw, his brotheris
wyfe; quha buir to him, in that filthie copulatioun, thre sones, namet Frances,
George, and Edward Irwingis, and ane dochter; quhilkis war all baptizet in
Ingland; contrair the tennour of the Actis of Parliament.

My lord Aduocat takis instrumentis of the pannellis Confessioun; and pro-
testis for Wilfull Errour, gif thay acquit.

VERDICT. The Assyse, all in ane voce, in respect of the said Jaffra his Judi-
ciall Confessioun, ffand, pronuncet, and declairit, be the repoirt and declaratioun
of Raulff Ker, burges of Lauder, chancellor, the said Jaffra to be ffylet, culpable,
and convict of the said cryme of Incest, contenit in his Dittay.—SENTENCE.
To be tane to the Mercat-croce of Edinburghe, and thair his heid to be strukin
from his body; and all his moveabill guidis to be escheit, &c.

¹ Without difference in their testimony.
devorare.

² Foaming, or frothing.

³ Destroyed. Lat.

GENERAL APPENDIX.

APPENDIX.

* * * SINCE the preceding Volumes were sent to Press, various important PAPERS having been discovered by the Editor, illustrative of facts narrated in the Trials, it has been thought proper to preserve a selection from them in this APPENDIX.

No. I.

PAPERS RELATIVE TO THE DEADLY FEUD BETWEEN THE EARLS OF EGLINTON AND GLENCAIRN, &c.

I. LETTER, *the King to the Privy Council*, 'for tryall of the authouris of the Conflict betuix Erle of Glencairne and the Maister of Wintoun, at St Johnestoun.'¹ August 6, 1606.

RICHT trustie and welbelouit Coufins and Counselloris, We greet 3ow well. The report of that broyle whiche did fall furth in THE TOUN OF PERTH, betuix THE ERLL OF GLENNCAIRNE and THE MAISTER OF WINTOUN, immediatlíe befor the last sessioun of Parliament keipit thair, did offend ws muche; speciallie, in respect of pe circumstances of pe tyme and place, quhen as, (beside the greit hazard in bringing many of THE NOBILITIE then present in the toun, to have enterit in blood with vperis, and thairby to haue revived that new mortified monstres of DEIDLIE FEED,) it wes a reddie way to haue stayit the progres of pat sessioun of Parliament, to pe greit preiudice and hurt of pe Estait, and to pe hinderances of all our services thair. Quhairvpoun, We ar moved the moir ernestlie to desire the knowlege of pe beginning of pe misdemeanour, and quhairvpoun the famin proceidit, and whiche pairtie wes first author thairof. And thairfoir, have thocht meet, heirby, to will 3ow to tak particuler tryell befor 3ow of pe first beginning of that truble, how the famin fell furth, and whiche of the tuo pairteis began the invasioun; and thairwith to try, whidder it wes vpoun a precogitat or foir-thocht intentioun, or if pe same fell furthe be mere accident, or *chaud mèle*, vnintendit be ony of the tuo pairteis against the vper? And heirof, willing 3ow to certifie ws, particularlie, of the whole treuth of that matter, in all the circumstances of the famin, oure plesour is, that, in the mein tyme, speciale directioun be gevin be 3ow to OUR JUSTICE GENERALL, HEICHE CONSTABLE, or thair deputies, or to ony vper Judges appointed by Commiffioun to proceid criminallie in the tryall of that matter, to

¹ From MS. *Collection of State Papers*, by Sir Thomas Hamilton, afterwards Earl of Melrose and Haddington.

desert all dayis, and to suspend and continew all proceses intendit befor thame be ony of these pairteis against vper, ay and quhill our forder plesour be signifieit vnto thame, efter We haue dewlie considerit the tryall taikin be 3ow in that matter. And so We bid 3ow richt hairtly fairwell. FROM our Manowr of GREINWICHE, pe 6 of August, 1606. [JAMES R.]

To our trustie and welbelouit cousins and counsellouris, THE ERLL OF DUMFERMLING, our Chancellour, and remanent Lordis and vperis of our COUNSALL OF ESTAIT, in oure kingdome of Scotland.

II. LETTER, *the Privy Council to the King, as to Deadly Feud between the Earls of Eglinton and Glencairn, and Lord Sempill, &c.*¹ Aug. 27, 1606.

MOST SACRED SOUERANE,

ACCORDING to 3our hienes direction, signified vnto ws by 3our MATIES faithfull counsellour THE ERLL OF DUMBAR, we did call and convene befor the Counsell the ERLIS EGLINTOUN and GLENCAIRNE, and THE LORD SEMPILL, with a nwmer of thair freindis, whome we knew to haue cheifest interes in the present FEED standing betuix thame, and efter that we had declairit vnto thame the greit paines and travellis whiche 3our sacred MAIESTIE took in 3our awin persone, for extinguischeing of the name and memorie of DEIDLIE FEEDIS, what good succes had followed vpoun 3our MAIESTIES travellis, in sum of the greittest FEEDIS of this kingdome, and how that 3our MATIE had now recommendit vnto THE COUNSELL the removing this FEED, whiche hes bene of so long continwance, and be reffoun of pe minoritie of THE ERLL OF EGLINTOUN could not whill now tak effect, we burdinit thame with a Submissioun, conforme to the Act of Parliament. The ERLL OF GLENCAIRNE pretendit that thair wes a quarrell betuix him and EGLINTOUN, and that a Submissioun wes vnnecessar; and, in end, he directlie refuist to submitt, becaus the Submissioun imported aganis him of the Slauchter of vmq^{le} THE ERLL OF EGLINTOUN, which he wald never tak vpoun him; bot offeris him reddy to tak tryall of the lawis for that Slauchter; whiche tryall, in his pairt, aucht to preceid the Submissioun. We rememberit him of ane Submissioun subscryvit be himselff in this sam matter, aggreable, in evrie word, to that whiche wes now desirrit when this matter wes last in handis afoir THE COUNSELL, in Februar 1604. Bot he, standing vpoun his innocencie of that Slauchter, refuist to submitt. EGLINTOUN maid no refuifall, bot pretending some excuse vpoun the schortnes of the wairning, he only craved a continuatioun to be advisit with his freindis, becaus this wes the first tyme that ever he wes chairgit in this matter, for his MAIESTIE; and THE LORD SEMPILL verrie frelie, for 3our MATIES satisfacioun and obedience, without ony ceremonie, offerit to submitt. We have grauntit vnto EGLINTOUN, with his awin consent, the 20 day of November nixt, to be advysit with his freindis, and to come prouydit in this matter. We have no assurance of THE ERLL OF GLENCAIRNES obedience, bot we hope that he will conforme himselff to 3our MATIES plesour: And THE LORD SEMPILL will be obedient.

We had lykwayis in hand the proces of GLASGOW, whairin we haue fund verrie greit insolence and ryatt committit be MYNTO and a number of the commonis of the toun; and hes committit the personnes guiltie to waird within the burghe of Linlithgow, whill 3our MATIES plesour be knawin.

This is all we haue done at this meiting, wherof we haue thocht meet to mak 3our sacred MATIES acquainted; to the effect 3our hienes may give direction thairin, as 3our MATIE fall think good; which we fall prosequute and follow out. And sua, praying God to blis 3our sacred MAIESTIE with a long, happy, and prosperous reigne, We rest

3our Maties maist humble and obedient subiectis and servandis.²

LYNLITHGOW, 27 of August, 1606.

¹ From the same MS. Coll. as the preceding. Hamilton, in his transcript.

² The subscriptions have not been transcribed by Sir Thomas

No. II.

SOCIETIE AND COMPANIE OF THE BOYES.

LETTER *from the Privy Council to the Marquis of Huntly.*¹ Jan. 20, 1607.

EFTER our verry hairtty commendationis to 3our good lordschipis, We ar informed of a verry greit infolencye begvn and lyk to grow to a greiter heicht within the boundis of 3our ll. office be JOHNNE GORDOUN, *callit of Geyche*, FORBES of *Corfindae*, PATRIK M^cINNEIR, and sum vperis, quho, having affociat vnto thame seluis ane number of doboschet and lawles lymmerris, calling thame seluis YE SOCIETIE AND COMPANY OF BOYES, thay haue most vnlauffullie and feditiouslie bund thame seluis in ane fellowschip, with aithis, vowis, and protestationis of mutuall defence and perfute; and pat euery one of pair quarrellis falbe comoun to all; and that the purpose and interpryse of ony one of thame falbe prosequuted, bakkit, and followed out, be the hale SOCIETIE, against all and quhatfumeuir, without respect of perfouns. Lykas, thir same lymmaris keipis thame selffis togidder, committing oppin and avowed reiffis, heir-schippis, and vperis enormities, in all pairtis, quhair thay may be maisteris and commaunderis. QUHILK proud and detestable attempt, as it is odious to be hard of in a peceable estait, subiect to a PRINCE whome GOD hes airmit with power and force able to suppres the same; so the same caryes with it no lyttill sclander and preiudice to your ll. honour and credit, that within 3our boundis, quhair 3our ll. may commaund, such ane handfull of lymmaris dar presume to attempt fuche interpryses; and We ar certane pat the knowledge heirof being broght to HIS MAT^{IE}, will mak his hienes wonderfullie till admeir 3our ll. long patience and connivance, in not apprehending, punisheing, and suppressing of thir lymmaris; and quhat constructionis may be maid heirvpone to HIS MAT^{IE} against 3our ll., we remitt to 3our ll. confideratioun. Alwayes,² we ar heirby to requeist and desire 3our ll. that, with all convenient speed, 3ow tak ordour for apprehending of the saidis persones, and some vperis THE CHYFTANES of that laules SOCIETIE, and put thame heir befoir THE COUNSELL; and that 3our ll. prosecute *with fyre and sword* the haill rest of thair followaris, and never leue of pe perfute of thame whill they be apprehendit, pvnist, and altogidder supprest; as 3ow respect HIS MAT^{IES} seruice, the peace of pe cuntry, and 3our awin credite, honour, and reputatioun, and as 3our ll. wald eschew that hard censure and constructioun which HIS MAT^{IE} man³ mak of 3our behaviour, in this point. Sua we commit 3ow to God. FROM EDINBURGHE, pe 20 of Januar, 1607.

To our verry honourable good Lord, THE MARQUISE OF HUNTLY.⁴

No. III.

TRIAL OF THE MURES OF AUCHINDRANE.⁵

LETTER, *the Earl of Cassillis to the King.*⁶ Dec. 3, 1608.

MAIST SACRED SOUERANE,

IT may pleis 3our gracious MAT^{IE}, I haue taikin this bauldnes, vpone the farder tryall of the

¹ From *Haddington's MS. Coll.* ² Nevertheless; at all events. ³ Must. ⁴ A Letter from the Privy Council, 9th Feb. 1608, directs him, by HIS MAJESTY'S command, between and Mar. 10 next, to prepare to depart out of the kingdom; and to give assurance for discharge of his offices, during his absence. ⁵ See this Collection, III. 124, &c. ⁶ From *Denmylne MSS.* Adv. Library.

trechrous MURTHOURIS of my vncle THE LAIRD OF CULZEAIN, and of the boy¹ quha careit the Lettir of his dyett, committet be THE LAIRD OF AUCHINDRAINE and his sonne; and now farder cleirit, be the greit paine and cayr of MY LORD CHANCELARE, quha hes broicht them to fik contrarietie in thair DEPOSITIONIS, that all indifferent men may be perfwadit off thair guyltines of bayth thais Murthouris. Nochtwithstanding quhairof, thai still continew in ane denyall. I wald maist humelie beseik 3our MA^{TE} that it micht be 3our MA^{TE}'s gracious plesoure to graunt ane WARRANT to THE CHANCELLER and COUNSALL OF SCOTLAND to PUTT thame to YE BUITTIS,² quhairthrow thai may be broicht to pe mair evident Confessioun. So, maist hartlie vyffing 3our MA^{TE}'s lang prosperitie and happinefs for euer, I remane,

3our MA. maist humbill seruant and subiect,

EDINBURGHE, the thrid of December, 1608.

CASSILLIS.

TO THE KING his maist excellent MAIESTIE.

No. IV.

PAPERS IN FARTHER ILLUSTRATION OF THE TRIAL OF MR THOMAS ROSS.

(See Vol. III., p. 445.)

[THE circumstances attending the Case of MR THOMAS ROSS are so very remarkable in their nature, that it was deemed proper to institute a still more rigorous search after the grounds and Warrants upon which his almost unexampled Trial was founded. After having carefully examined the Acts of the Privy Council, and many other authentic sources, the Editor has the satisfaction of having at length discovered the identical copy of his Trial, which had been transmitted to Court, for the information of KING JAMES VI. Besides the proceedings which have already been printed, it contains a translation of the offensive THESIS and ANNEXA, which, as has already been seen, were ordered to be taken up by the public prosecutor, and upon no account to enter the Records. Annexed to it are the DEPOSITIONS of the unhappy man, which, in expectation of a free pardon, he voluntarily emitted before the Privy Council of Scotland. The original draught of the KING's Letter to the Secret Council, to bring him to Trial and execution; and, in compliance with the King's known wish, their cruel recommendation, that Ross should suffer an ignominious death, have also been obtained. These interesting documents were found in a Volume of *Sir James Balfour's* invaluable *MS. Collections*, in the Advocates' Library, which had accidentally been mislaid when the Editor conducted the former enquiry.

The reader has here the painful satisfaction of finding, that the conduct of KING JAMES and his COUNCILLORS was still more inexcusable than had at first been conjectured. It is now clearly proved, beyond the shadow of a doubt, that the PASQUILL, or THESIS in question, had not been *printed* or industriously *disseminated* by its unhappy author; but that it had merely been affixed on the door of the College,—that, *de facto*, no person had read it, excepting the Vice-Chancellor of Oxford, to whom it had been brought by a student,—that this student, instantly on the Thesis having been hung up, had only perused a few lines of the Paper, and brought it, without delay, to his superior,—and that, after the examination, confession, and imprisonment of Ross, the Vice-Chancellor had transmitted the THESIS to Court, requesting instructions how the poor man should be disposed of.

¹ William Dalrymple.

² The torture of the boots. The younger Auchindrane was put to the torture, which he bore with remarkable fortitude.

That Ross was *insane*, as well as in the most abject poverty, there can now be no doubt. Altogether, indeed, his Case is one of the most pitiable on record.

It only remains to the Editor to state, that he is indebted to GEORGE SMYTHE, Esquire, Advocate, for the following authentic information, regarding THE FAMILY OF ROSS of Craigie, at and shortly previous to the period of Mr Thomas Ross's execution, Sep. 10, 1618. Such additional notices and evidence as have fallen under the Editor's observation are inserted in the foot-notes, along with the verifications of Mr Smythe's memoranda.

' I. JOHN ROSS OF CRAIGIE appears to have been the father of (1.) *John Ross* of Craigie. (2.) *James Ross of Creytoun*, who acquired certain lands at the East end of Forgundenny from Walter Oliphant of Newton, in Feb. 1539:¹ He married *Marjory Stewart*; by whom he left a daughter, *Janet*,² who married Patrick Lyndsay of Dowhill.³ (3.) *Thomas Ross of Maitlands*, who was killed at the battle of Pinkie.⁴ *Grissell Duncanson*, his relict, afterwards married Alexander Crichton of Forgound.⁵ His son, *James*, was killed in an affray with the Oliphants, Nov. 12, 1571.⁶

' II. JOHN ROSS OF CRAIGIE was infeft in the Lands of Hilton Malar, Sep. 17, 1539.⁷ He was served Tutor-at-law to *Janet Ross*, his niece, Mar. 17, 1543.⁸ He is mentioned by KNOX, in his History of the Reformation,⁹ along with "the pensionars of the Prelates, Oliver Sinclair, and utheris, who were faithful to them in all things," and informed them of all proceedings at Court. He married *Isobel Liddell*,¹⁰ who had previously borne a number of children to Patrick Hepburn, Bishop of Moray, so notorious for his gallantries. He was killed at Pinkie, and left four sons and three daughters.¹¹ (1.) *Thomas*. (2.) *John*. (3.) *James*, who had a Charter of the Lands of Pitheveles to him and *Catharine Mcgie*, relict of umq^{le} Alexander Menzies of that Ilk, his spous, Apr. 7, 1566.¹² He afterwards married *Janet Robertson*, relict of umq^{le} Thomas Fowlis, burges of Perth.¹³ He left no issue; for his brother, *John*, was served heir to him, Nov. 3, 1582.¹⁴ (4.) *William*. (5.) *Barbara*. (6.) *Alison*. (7.) *Grissell*.

' III. THOMAS ROSS of Craigie married *Jean Hepburn*; by whom he had one daughter, *Margaret*,¹⁵ who married John Seytoun, apparent of Lathrisk. Jean Hepburn was infeft in the lands of Hilton Malar, in liferent. After the death of Thomas Ross, she married Peter Oliphant of Turings.¹⁶

' IV. JOHN ROSS of Craigie succeeded, as heir of entail, to the lands of Craigie, upon the death of Thomas. He married *Agnes Hepburn*; and had by her, (1.) *Patrick*, who married *Beatrix Charterhouse* (*Charteris*). She was infeft in the lands of Hilton Malar, in liferent, Apr. 9, 1575.¹⁷ After his death, which took place before that of his father, his relict married Robert Leckie, apparent of Kypdarroch.¹⁸ (2.) *Mr Robert Ross*,¹⁹ who was infeft in the estate of Craigie, and was designed "fiar of Craigie" before his father's death, which took place about 1601.²⁰ He married *Margaret Eviot*. He seems to have sold the lands of Craigie to Mr David Moncreif, son of William Moncreif of that Ilk, before 1620. (3.) *Mr Thomas Ross*, the unfortunate subject of the preceding Trial. (4.) *Andrew*.²¹

¹ Sheriff Records of Perthshire, Jan. 12, 1573. ² May 20, 1588, James Lindsay, apparent of Dowhill, was served heir to *Jonet Ros*, his mother, in a piece of land and orchard in the barony of Forgundennie; and fishing in the Water of Earn.—*Inquisit. Retorn.* Perth, (1055.) ³ *Sh. Rec.*, Jan. 12, 1573. ⁴ *Ibid.* Apr. 22, 1573. ⁵ *Ibid.* Jan. 12, 1573. ⁶ See this Collection, I. 25. ⁷ *Sh. Rec.*, Nov. 3, 1591. ⁸ *Ibid.* ⁹ Knox's Hist. of Ref., p. 28. ¹⁰ *Sh. Rec.*, Mar. 14, 1550. ¹¹ *Ibid.* Jan. 5, 1549. ¹² *Ibid.* Apr. 28, 1573. ¹³ *Ibid.* Jun. 12, 1577. ¹⁴ *Ibid.* ¹⁵ She was retoured heir to her father, in the lands of Mayler, lying within the barony of Craigy, Feb. 19, 1574.—*Inquis. Retorn.* Perth, (36.) ¹⁶ *Sh. Rec.*, Jan. 15, 1574, and Apr. 20, 1575. ¹⁷ Apr. 16, 1600, *Peter Oliphant of Turings*, having acquired an annual-rent of 150 merks out of the Maynis of Malar, Barclay's-hauch, &c., in the barony of Craigy, from *John Ros of Cragy*, and *Agnes Hepburn*, his spouse, under reversion of 1400 merks, with their joint consent, sells his right to Mr John Moncreiff of Easter Moncreiff, and Jane Spens, his spouse. This was confirmed by Charter under the Great Seal, Jun. 28, 1602.—*Reg. Mag. Sig.*, XLIII., 262. ¹⁸ *Sh. Rec.*, Jun. 9, 1596. ¹⁹ *Ibid. eod. loco.* ²⁰ It appears, by the Great Seal Register, that, on May 21, 1602, *Robert Ross of Cragy*, in consideration of the price of 4150 merks, sold to Christian Moncreif, eldest daughter of William Moncreif of that Ilk, the Mill of Craigy, with the Mill-lands, and three quarters of the town of Craigy, lying in the Barony of Craigy and Sheriffdom of Perth. This Charter of Sale was confirmed by King James VI, Jun. 28, 1602.—*Reg. Mag. Sig.*, XLIII., 261. ²¹ *Sh. Rec.*, Oct. 13, 1598, and Jan 13, 1601. ²² *Ibid.*, Oct. 9, 1591.

To these notices, the following additional information may be annexed.

V. MR ROBERT ROSS of Craigie, above mentioned, seems, from entries in the Kirk Session Records of Perth, to have been reduced to a state of the utmost poverty and destitution. Mr James Scott, in his Extracts from these Records, has the following melancholy entry:—‘On the 21st of November, 1620, *Andrew Ross*, in name of *Mr Robert Ross*, sometime of *Craigie*, his brother, produced before the Session the said *Mr Robert's* Supplication, showing his present misery, and divers diseases wherewith he is vexed, craving support. Three pounds were taken out of the Thesaurie and delivered to the said *Andrew*, to give this brother.’¹

The Editor has not been fortunate enough to obtain any material information regarding the personal history of *Mr Thomas Ross*. From his own DEPOSITIONS,² however, it is abundantly clear, that he must have endured great privations while in England. In that document he actually asserts, in the most solemn manner, that he was driven, by his desperate circumstances, to adopt the unhappy step which ultimately proved the cause of his destruction, in the vain hope, that the wit and talent he had thus exhibited in so bad a cause, would not only plead his apology with the King and Court, but become the means of his future advancement. *Mr Scott* merely remarks, as in reference to this matter, that ‘it appears, from a Supplication to the [Kirk] Session, a considerable time before, that *Mr Thomas Ross* had been a long time in the Prison of Edinburgh.’

In conclusion of the disagreeable subject, it is only necessary to add one other entry, from the Kirk Session Records of Perth. It is pleasant to remark, that that charitable body had all along acted in the kindest manner towards this truly unfortunate family; and farther, that they appear to have been actuated by the same pious feelings, in numerous other cases of a similarly distressing description.—‘Jan. 9, 1621. Mr John Guthrie, Minister, reported, that he had given *thirty shillings*, which he had received from the Thesaurie, to *Andrew Ross*, to bear his expenses, when he passed to the visitation of [*his brother*] umquhil *Mr Thomas Ross*, before his execution.’³

The Editor has failed in tracing the period when Ross was admitted a Master of Arts, and at what University, although he was politely assisted in his enquiries by the REVEREND DR LEE, who gave him access to the Rolls of the Universities of St Andrews and Glasgow. He fears he has already encroached too much on the limits of this work, and now leaves the reader to draw his conclusions as to the usage and cruel fate of the unfortunate Mr Thomas Ross.]

I. LETTER, the King to the Privy Council of Scotland, with instructions as to Mr Thomas Ross.⁴ [*Sine data.*]

RIGHTIE trustie and rightie welbeloued cofen and counsellour, and trustie and welbeloued counsellour, WEE greete yow well. WEE sende yow here enclosed, a LIBELLE, (written by a villanous caytiffe, or rather monfter, of our owne contrie,) whiche, in time of Disputations at OXFORDE, was affixed vpon a gate of one of the Colleges, as THESES to haue bene disputed: And a scholler, hauing taken doune and red the first fix lines, (not daring to be conscious to him selfe of reading further of such purpos,) presentlie caried to the VICE CHANCELLOUR; who, suspecting who mighte be the penner, fente for him; and hauing gotten his CONFESSION, that not onlie he was the author, but likewise, that he wolde maintayne all to be trew which he had fette doune therein, the Vice Chancellour discreetelie and dewtifullie committed him cloffe prifoner to the Castle of Oxforde, and fente the Libelle to vs, that WEE mighte declare oure pleafour, bothe concerning it and the author. Whiche, his discreete cariage, hath, in our iugement, deserued to be, by a Letter of thankes frome our wholle COUNSELLE,

¹ *Mr James Scott*, Minister at Perth's Extracts from the *Kirk Session Records of Perth*, II., 8, &c. this Appendix, p. 588, &c.

² *Scott's* Extracts from *Kirk Session Records of Perth*, II., 8.

³ See

⁴ From the Original draught, preserved amongst the *Denmylne Papers*, Adv. Library. It is carefully corrected, and interlined in many places.

there acknowledged. WEE likewise sende yow the person of the man, to be censured by yow, willing yow firste to examine him, and thereafter adueise of the forme of punishment whiche yee fall thinke fitte to be inflicted vpon him. For, although by the Lawes of this our kingdome, it be not permitted for to vse extraordinarie punishementes, yat hath it euer bene lawfull for the KINGES there, to deuise and inflict punishments, according to the qualitie and nature of the offence, which in this particulare can be no lesse then Treason[!] For if no man make question but that the writing of an inuective¹ againste THE KING and his progenie is Treason, in the highest degree, and in our opinion it is a grevous faulte, (and WEE could more easilie forgiue the writeing againste our selfe,) then² againste the wholle Nation from whence WEE ar sprunge. And if it wer a mater capitall in Germanie for STARCOIUS³ (being a German, a mere stranger to Scotland, and one who, perchance, had bene hardlie vsed by some particulare person there) to haue written against that wholle Kingdome, how much more muste it be capitall to this fellow, who, being Scottes borne, hath so villanouslie, filthilie, yea, and falslie, defamed his owne contrie, by writing in such forte againste his contriemen, the specialler of our seruantes, [and perswaded a course to be taken against them, which possiblie could not be performed, without manifest danger and manifest violence against our selfe,⁴] and so much the more is his offence greuous, as that, by the space of two monethes before, he continuallie vaunted that he wolde do such a feate. It is therefor our pleafour, that yee aduise vpon his punishment, and hauing resolued, that yee aduertise vs with all expedition. So fare yee well.

II. LETTER, the Privy Council of Scotland to the King. Jul. 30, 1616.

MOST SACRED SOUERANE,

WE reffaued youre MAIESTEIS Letter, with the infamous LIBELL writtin be that wretched and unhappie fellow ROSSE, and we imparted the same to youre MAIESTEIS COUNSELL; who, with all dew reuerence and most humble thankis, doe acknowledge youre MAIESTEIS singulair cair and prudent direction, alswell in this, as in all otheris thingis importing the credite and reputatioun of this youre MAIESTEIS Kingdome; and thay haif writtin thair awne thankis to *The Vice Chancelaire of Oxfoorde*, for his wyse and kynd resolutioun and proceidingis, in that mater.

We haif aduised with THE LIBELL, and with the Lawis and Constitutionis of this Kingdome, maid aganis the writtaris and settaris oute of fuche infamous Libellis; and we find the same to be capitall, and pvneishable in the heighest degree. This fellow is not as yitt come heir; and becaus of the approitcheing vacance,⁵ and dissolueing of THE COUNSELL, we haif gevin direction to THE MAGISTRATIS OF EDINBURGH, howsoone he fall aryve, to committ him cloise prisounair in thair *Irne-House*,⁶ and to lay him in irnis; and vpoun thair aduerteisment, we fall conveene and examine him; and accordinglie, we fall gif direction for his tryall and convictioun, and fall superceid the pronunceing of Doome, till we vnderstand youre MAIESTEIS forder pleafour, anent the forme of his pvnishment. Oure opinioun is that he falbe HANGED at the *Mercatt-Croce of Edinburghe*, and his heade affixt on ane of the *Portis*. But in this we submitt oure selffis to your MAIESTEIS direction; quhairunto we fall conforme our selffis. And so, praying God to blisse your MAIESTIE with a lang and happie reigne, we rest

Your Maiesteis most humble and obedyent subiectis and seruitouris,

AL. CANCELL^s. BINNING. S. W. OLIPHANT.

HALYRUDHOUS, penult July, 1616.

TO THE KING his most sacred and excellent MAIESTIE, &c.

¹ The original words had been 'such an execrable inuective.' ² On the margin, 'that one should write against his own countrie.' ³ See the Introduction to *Ross's Trial*, III., p. 445, &c. ⁴ The words within brackets are added on the margin. ⁵ 'Vacance;' vacation. ⁶ Their strong iron room, or 'cage,' as it was afterwards called, in which desperate criminals were confined previous to their execution.

III. *Followis* THE THESE, *with* THE APPENDICES *adionet thairto, translated.*¹

THAT all SCOTTISMEN aucht to be throwin furthe and expellit out of THE COURT OF ENGLAND, (excepting his gracious MATIE, his sone, and few vtheris,) and that pe INGLISCHMEN ar nichtielie blindit, deceavit, and fylet, albeit thay be vtherwayis ane Natioun full of eyis, and quick-sichtit, that sufferis so vnproffittable and pernicious a multitude and pudle of raskallis to rage and bear dominion within thair entrallis and bowellis. Off quhilkis blasphemis (3e haif writtin) that 3e wald rander and follow out the maist just reasones, by Godis grace, at ane vther occasioun, moir lairglie and accuratlie, bothe by prose and verse. Bot now 3ow put furth 3our finger to schaw only the fontanes, and thease in few number, be reffone 3e inlaikit lafer² and helpis to performe the samyn.

I. SANCT JEROME, AUGUSTIN, and STRABO wryttis, that SCOTTISMEN of auld war men-eitteris, or eatteris of menis flesche; and trewlie, (as 3e beleve,) for as 3it the flesche whilk the ancient Scottis swallowed stikis in the jawis and teith of the Courtiours, quhairby thay ar provoikit to fuche ane insatiable avarice and intollerable pryde.

II. JOSEPHUS wryttis, in his booke against Appion, that, in the tyme of Amenophis, King of Ægipt, thair raget and rauaget vp and down tua hundreth thowseand lipperis in Ægipt, quha, by vnlauchfull meanis, and by mervellous craftines and subtillitie, emptied and pilleid³ all pe substance and riches of Ægipt; whilk wald haif bene haillilie vndone, gif this vnhallowt menzie⁴ had nocht, by the wisdome of the King and Nobillis, bene cassin out and expellit: Sua, peace and peace,⁵ THE KING and COUNSALL OF ENGLAND fall be vndone, and go down, iff this companie or band that robbis Kingdomes and landis be nocht sent bak to thair wounted feattis and stallis.

III. THE feaven leane ky⁶ of Pharaon confwmet and distroyit the fevin fatt and weill fed ky, and 3it war nocht satisfeit; and the fevin deaff and toome⁷ earis of corne, blasted with the East wind, swallowed vp the fevin big and fatt eares, and war nocht filled: Swa, these Courtiours, by thair begynning, and offspring, and first estait, being most miserable, thay distroy, overturnes, and consumes ING-LAND, ane maist plentiefull cuntrie; and ar nocht 3it filled with so grit and evill conquessit⁸ ritches, acquyret by the schipwrak of pe haill Kingdome of England.

IV. THAY quha, in pair 3outh-heid,⁹ war trwbillit with famine and hunger, can nocht, quhan thay ar cum to thair full growne aige, by no plentie, be satiat:¹⁰ Sua, it befallis vnto these, quha of maist sklender begynning, by mad mirriement and sport of Fortoun, ar cayreid vp to the heichest top: 3ea, gif pair war gevin vnto his maist bountiefull and liberall MAIESTIE ane thowseand philosophik stoness, quhairby the haill Oceanus nicht be convertit in gold: 3itt, these wald nocht be filled, gif the Cantabrik or Biskay Sea of Spayne, war gevin vnto thame to drink; thay wald nocht suffer ane thristie bird to drink ane drope thair of.

V. THAY spend more in pair gairtanes, and ribbens¹¹ in the latchettis of thair schooes, than pair fatheris bestowis in pe intertenement of pair haill famelie. O quhat tymes ar these! O quhat maneris be these! O the infamy of the world and reproche of the earthe! Now pair is mony Smerde Magiens, but thay vaunt thame selfis fa to be.

VI. THESE Scottis Courtiours (verrie few exceptit) haif the disloyaltie or vnfaithfulnes of the Carthaginians; the menfworne aithes of the Phrygianis or Trojanes; the luxurie of the Persians; the avarice of Mydas, King of Phygia; the crewaltie of the Effedonis, ane people of Sythia; (quhilk people singis at pair parentis funerallis, and drinkis in 3air skullis, and eattis pair flesche mingled with vther beistis;) the prophanitie of Epicurus; the deceat of Synon; mair wyld than a carian, a bettill, or klok vnder the wingis of ane Eagle; thay vse the spuilzeis¹² of Spartacus, (this Spartacus was a Thra-

¹ From the identical copy of the Dittay, which had been transmitted for THE KING's inspection, preserved among Sir James Balfour's MS. Collections, Adv. Library, Edinburgh. ² Wanted leisure. ³ Pillaged; plundered.

⁴ Train; company; gang. ⁵ So, or in like maner, piece-meal. ⁶ Seven lean kine. ⁷ Empty. ⁸ Ill-gotten, or acquired. ⁹ Youth; minority; less-age. ¹⁰ Satiated. ¹¹ Garters and ribands. ¹² Spoils.

cian fencer¹ quha with Chyfus and Oenomaus brak out of the Fence-Scole of Lentulus, and drestit ane army of fervandis, and overcame Clodius Glaber his army, and spuilzeit all Campania, and overthrew Lentulus army and Cassius troupes, bot was defeat by Craffus,) and the fearcenes of Virratus (the Portugall Lusitanus, quha frome pastor become ane hunter, and paireftir the chiftane of ane army, trublet the Romaines, and defeat thame in Spayne, and at lenth was slayne be treaffone, procureit be Cœpio), and the leafingis of the Candians or Cretes.

VII. VNTO his schyneing and royall MATIE, be vntrublet health and increse of glorie ! Bot God, frome the heavnes, perfew these Courtiours with blak fyre and brimstone ! I shall, so long as I leave, for thair distruction, schaw my self Coriolanus, and nocht Themistocles ; that is to say, ane oppin ennemie, and nocht ane secreit freind.

VIII. O INGLISCHE ! Inglische ! The most expert and wyfest Natioun in weir,² the terrour of the Spanzaird, triumpharis over France and Guyene by so long a tyme, in quhat benumbnes or droufines ar ze fallin ? Ze, quha in weir and battell ar intometable,³ now ze fall go doune quiklie by diffait, at vayne appeirances of imaginarie matteris, and by the toyis of fals accusaris and delatouris, in quhome thair is nocht so muche fauorines or witt as in the qubyte of ane egge ! Zitt all the wealth and commodities of your most flurischeing kingdome, is cayreit away in boittis and crearis,⁴ thiftioullie, to Scotland ; and incontinent, being helpit with your awin commoditeis, thay will vtterlie trampill vnder fute your Natioun and countrie, and will cut your throttis with your awin fuorde, befor ze be awar ! Quhat a patient Socrates will indure thease iniureis ! Quha may nocht snuff or smell gritter schortlie to follow ?

IX. ZE haue gottin out of Scotland ane most worthie PRINCE ; nocht ane thowfeand Kingis, counterfute Stage-playeris, quhytted tombes !⁵ Thair is hingand aboue your heidis, or lying vpone your schoulderis, ane moir hard servitude and shearpar captiuitie than over Nationes quhilkis ar subdewid and overcum by weir ! For, eftir the Romanes had overthrawin, in weir, the Syrianis and the Ægyptianes, thay gave thame to be governet be thair awin cuntriemen ! Thay exactit only tribute dew frome the vanquished ! Sall, thairfoir, those barbarous people posses and injoy the first places, in Courte, in Counsale, in Kirk, in Nobilitie, in Landis, offices, functiones, and giftis of Ingland ? Thair furlie, the libertie and glorie of England is evanished ! Now, England is hailyly⁶ delyuerit over in the handis of Scottis Courtiouris, and the Judges haif enterit pair nekis vnder the yoke of theiffis ! O, the Warld is turned vp fyde down ! We ar now overturned vnto the auld mafs and chaos of confusioun ! Lett sum revendge spring out of my bones, that may chestize with fyre and suord the Scottis Court and her possessours. Geve thankis, ze Scottis Courtiours, vnto my povertie, and nocht vnto the barrannes and penurie of my ingyne, gif I airme nocht all Ingland to cut your throttis. Bot the Lord preserve ever more his awin annoynted, both weilbelout and electit !

X. REMOVE this stinking pompe, pudle, and trifles of the Scottis Court, and pride of this hautie, fekles,⁷ and impotent commontie. Thane, fall thair be few in your boundis that fall be beggeris, nidie,⁸ ragget—than, the treyis, gibbettis, and gallouffis of all the cuntrie fall nocht be laiden with the wecht of the hangit vp carcades !⁹ The Scottisfmen, as loch-leitches, and wormes in coirnes, drinkis out the sap of your cuntrie, and soukis out your merche,¹⁰ by inlaik quhairof so many ar led and drawin to thift and robberie ! Those Courtiours draw out gritter welthe furth of your bowellis, by your knowlege,¹¹ than France, Germany, and Spayne, is able to affoord ; quhilkis guidis, whan thay ar thus pullet¹² away, quhat fall pe maisterfull and niedie cowmontie¹³ of Ingland do or vndertak, bot to cast thame

¹ Fencer ; gladiator. ² War ; the art military. ³ Indomitable. ⁴ Boats and *crears*. *Crears* were a sort of vessel much in use in the Western Islands, to which they appear to have been peculiar. ⁵ Whited sepulchres. ⁶ Wholly ; entirely. ⁷ Weakly ; feeble, &c. ⁸ Needy. ⁹ Carcasses. ¹⁰ Sucks out your marrow. ¹¹ Without your knowledge ; secretly ; by stealth. ¹² Perhaps, for '*pilleit* ;' pillaged ; plundered. ¹³ Destitute and needy '*commonalty*,' or common people.

felfis heidlong in ane golff,¹ quhilk mycht leave² fufficientlie, without manis hearne, gif thofe howlatts and ftymeis³ war fchote⁴ away.

O, worthieft Inglifchmen ! Wey the force and reafones of this my Counfall, quhair of I haif fkaيرة recited the tent pairt ; and 3e fall perfave that I am come to 3our cuntrey as ane helthfull ftarr, quhilk thir Courtiours haif drowned with the fea wallis, as the Lycaonian Starr, or Vrfā Maior, to quhome it war ane villanie to have fo drowned fuche ane ftarr.

Bot we fall nocht all die to day vnrevendget !

IV. *Followis the tennour of THE DEPOSITIONES of Mr Thomas Roifs.*

AT EDINBURGH, the ellevint day of Auguft, 1618. In prefens of Sir Williame Oliphant of Newtown, his Maiefties Aduocat.

MR THOMAS ROISS, humblet on his kneis, and deiplie fuorne vpone his folempne oathe, fayis, that he will declair the treuthe in all and everie thing that fall be demandit of him. Demandit, yf THE THESIS, and APPENDICES pairof, producet and fchawin vnto him, and writtin on thre fydis of paper, be his awin hand-writt ? Depones and grantis, that thay ar his awin hand-writt—and that na vther perfone wrait ane word or Lettir pairof.

Demandit, quhat moved him to wryte them ? Depones, that he, being ane gentelman borne, deprieved of all benifeit that he micht expect of his fatheris eftait, and being reducet to the extreme point of miferie and povertie, and haveing reffauet mony infupportable iniureis of his cuntrie men, at Courte ; he, being efchamed to beg, and difdaneing to fteill, and haveing no meanis quhairby to intertene⁵ him felff, finding no comferte nor releif of his contriemen at Courte, he pairfoir, being in difpair and mad, out of his diftemperat humour and frenysie, and fair aganis his heart, without ony fetled refolutioun, and without ony purpois to do evill, bot to fchaw the greif of his heart, and to move pitie and compaffioun towardis him, wrait thir THESES ; thinking, that the wryting pairof, in this his mad humour and difpofitioun, wald raper procure pitie nor⁶ wraithe, at HIS MATIES handis ; and that God, peradventure, wald moue HIS MATIES heart, who is a prudent and wyfe Prince, to think that the deponer was drevin, vpone plane miferie and neceffitie, to wryte thame ; and pat pairfoir HIS MATIE wald pitie his diftres and miferie, and help him : And he apprehendit that fome weill-myndit Courtiours wald interceid for him, and fchow HIS MATIE that he quho had done fo weill vpone a evill fubieft, wald do far better vpone a goode fubieft, gif he war imployed ; bot, yf it fould pleis God to move HIS MATIE to think vtherwayis of this matter, and to tak it in evill pairt, it behooved the deponer to abyde Godis will and THE KINGIS MATIES.

Demandit, quhat he did with thir THESES, eftir the wryting thair of ? Deponis, that he affixt thame on a dur of the Kirk, callit ST MARIES KIRK, at OXFURDE, vpone Twifday, being a preiching day, in the moneth of July laft, immediatlie as the people war diffolueing frome the Sermone, and as DOCTOR GODWENE, VICE-CHANCELOUR of THE VNIUERSITIE of OXFURD, was cuming out of the Kirk. And depones, that immediatlie eftir pai war affixt, ane man, quhome the deponer knowis nocht, tooke thame doun, and cayreid thame to pe Vice-Chancellour. And grantis, that THE THESES now producet and fchowne vnto him ar pe fame verrie Thefes, and that fame Paper quhilk he wrait and affixt, as faid is.

Demandit, yf at ony tyme afoir pe wryting of THE THESES he was in conference with ony perfones pairanent ? Depones, that ane moneth afoir the affixeing of THE THESES, he was in conference with pe Vice-Chancellour ; and regrated vnto him his hard eftait and conditioun, and the vnthankfulnes of his cuntrie men, the Courtiours, quho wer his gritt vnfreindis.⁷ And he fchew the Vice-Chancellour that he had a purpois to go to France, and intreated him that he mycht haif a *viaticum*⁸ to transf-

¹ Gulf.

² Who might live, &c.

³ Owls and bats.

⁴ Thrust ; driven.

⁵ Support ; maintain.

⁶ Than.

⁷ Enemies.

⁸ In this sense, *viaticum* seems to have been a term employed to denote a charitable contribution raised by authority, within the Universities, for enabling poor students to undertake journeys to foreign parts, &c.

poirt him. Quhairvnto the Vice-Chancellour zeildit. Bot the deponer being eschamed to go through the Colledges to collect the same, he reffaut only foure or fyve pund Sterling, and spendit it as he gat it; quhairas, gif he had reffaut all that wald haif beene gevin, in caice he had tane panes to go throuche the Colledges to haif collectit it; or yf he had gottin ony *viaticum* frome HIS MA^{TIE}, he wald nocht haif writtin thir THESES, bot wold haif gone to France.

Grantis also, that he regraited the vnkynd deilling of the Scottis Courtiouris towardis him, to Sir Harie Schaveill, Principall of Eittin Colledge, belyde Wyndfoir; bot denyis, vpone his gritt aithe, that he impairted his purpois to wryte THE THESES, outh¹ to the Vice-Chancellour or to him.

Demandit, be whose advyse he wrait thir THESES? Or, yf he had conference with ony persone thairanent? Depones, vpone his grit oathe, that he had no advyse, counfall, nor informatioun gevin to him in that matter; bot being at Greenwitche, a littill eftir he went to Oxfurd, he addrest him selff to one of THE KINGIS Chaiplaines, quho is a heiche² tall man, and was walking in Grenewitche Hall for pe tyme. His name he knowis nocht. And he intreited the Chaiplane to tell THE KINGIS MA^{TIE}, that he was borne away; and that he had long waited on, without ony help or suppoirt; and that he was now drevin to grit povertie; and that he wald pray God for the weifair of HIS MA^{TIE} and his childrene—bot, for his cuntriemen, the Courtiouris, quha had bene so vnthankful vnto him, he fould rather be lyk Martius Coriolanus vnto tham, nor³ Themistocles.

Grantis alsua, that afoir his passing to Oxfurd, he forgaderit with on Johnne Line, Scottifman, a taillour, duelland in Titler streit; and that he tauld him, that wer not for pe respect and reuerance that he cayreid to HIS MA^{TIE}, he was halflingis myndit (yf he gat nocht some suppoirt to carye him to France) to sett vp some THESES, aither in Oxfurde or in France, against the Scottis Courtiours, and that it was goode for THE KING to send some of thame away. And the deponer desyret Johnne Line to acquent THE KINGIS MA^{TIE} heirwith, be Petitioun; and he craved Johnne Lynes advyse, how he micht eschew the wryting of these THESES; bot Johnne Lyn had no advyse in the matter. And sayis, vpone his grit oathe, that he nevir reveillit forder of this matter to ony persone, bot so far as he hes confest, concerning the Chaiplane and Johnne Lyn. And denyis, vpone his oathe, that evir he gave out or disperfit ony coppeis of thir THESES.

Demandit, yf at ony tyme eftir he had meditat vpone the wryting of THE THESES, and afoir his affixing of the same, he communicat the matter to ony persones, or schew pe THESES vnto thame? Depones, that he only reveillit the matter to his oist⁴ in Oxfurd, callit Johnne Ewing, taillour, and to his wyffe, in this maner, to wit, that he was going to wryte something quhair of the haill scolleris of Oxfurd wald schortlie get knowlege, and wald heir of it; thairfoir, let me be quyet a quhyle, and lett no man trouble me. And this was xxiiij houres afoir pe affixing of the THESES.

Demandit, how it was knowne that he had writtin and affixt the THESES? Depones, that the Vice-Chancellour knew his hand-writt, and send for the deponer within a quarter of ane hour eftir the affixing of the same, and askit of the deponer, 'Gif he had writtin thame?' Quhilk the deponer grantit. Quhairvpone the Vice-Chancellour send him prifoner to the Castell of Oxfurde; quhair he was straitlie keipit ten dayis; till thre Scottifsmenne of the Gaird war send to bringe him to Courte. Denyis that, during his abode in Oxfurde Castell, he had speiche with ony persones anent this matter, bot⁵ with his keipparis and vtheris prifoneris; quho askit of him, the cause quhairfoir he was wairdit? To quhome he anfuerit, becaus he had writtin some littill thing aganis his cuntrie-men, the Courtiours, advyseing THE KING to send some of thame hame.

Depones, that quhen he come to Courte, he was putt in a Inne, belyde Charing Croce, quhair he stayd thre nychtis and two dayis; and that he was examinat be the Duke of Lennox,⁶ the Marqueis

¹ Either. ² High. ³ Than. ⁴ Host; landlord. ⁵ Unless; except. ⁶ Ludovick, second Duke of Lennox, who had held some of the highest honours in Scotland. He was Great Chamberlain, Lord High Admiral, and Lord High Commissioner to the Parliament of Scotland, 1607. The Duke of Lennox was successively created Earl of Richmond, (Oct. 6, 1613,) Earl of Newcastle and Duke of Richmond, (May 17, 1623,) Master of the Household, first Gentleman of the King's Bedchamber, and one of the Knights Companions of the Order of the Garter. He died Feb. 16, 1624, *etat* 50, without being survived by any of the issue of either of his three marriages.

of Hammiltoun,¹ the Vicount Fentoun,² the Lord Hay,³ and Sir Williame Alexander.⁴ And pat pair-
 efter he was convoyed to (a) schip of Prestoun, lyand at Southwark, be Mr Johnne Broun and Patrik
 Logane, Scottismenne, and be ane Inglischman of the Gaird.

M. T. Ros,⁵ with my hand.

T. W. OLIPHANT.

No. V.

DOCUMENTS RELATIVE TO THE 'EGYPTIANIS,' OR GIPSIES.

[IN many parts of the preceding Volumes, TRIALS have been inserted, from time to time, regarding the remarkable Asiatic people, commonly known in early times, in Scotland, by the name of EGYPTIANS. It seemed to the Editor to be desirable to afford to the enquiring reader some traces of their wanderings in Scotland, during the fifteenth and sixteenth centuries; and for that purpose, he has examined as many of the earlier Records as his opportunities have, at present, permitted.

It is sufficient, for the purposes of this Collection, to remind the reader, that, from whatever country that singular race took their origin, (which, though there be much room for difference of opinion on the general question, was assuredly Oriental,) and whatever the causes may have been which prompted their emigration, or occasioned their expulsion, from their native soil, this wandering people first made their appearance in Europe early in the fifteenth century. They succeeded, in spite of numerous decrees of expulsion and persecution, in making good their settlement in various kingdoms, and especially in the countries of Poland, Germany, Hungary, France, Spain, Italy, England, and Scotland. It is very remarkable, that, although they have now been resident in Christendom for nearly *four hundred years*, they have preserved themselves as a separate and peculiar race, in *all* the countries where they have sojourned; and have all along been characterised by their distinctive manners, customs, language, and superstitions, which have been kept almost pure and unimpaired, from the date of their first emigration. Indeed, few instances have occurred, in any country, where any considerable portion of them have steadily settled in towns, or followed any

¹ James, *second* Marquis of Hamilton, a great favourite of King James VI. He was created an English Peer, by the titles of Baron of Ennerdale, in Cumberland, and Earl of Cambridge, June 16, 1619; was a Gentleman of the Bedchamber, Steward of the Household, and Lord High Commissioner to the Scottish Parliament, 1621; and Knight of the Garter, Jul. 7, 1623. Died Mar. 2, 1624-5, *ætat* 36.

² Alexander, Viscount of Fentoun, eldest son of Sir Thomas Erskine of Gogar, created Earl of Kellie, Mar. 12, 1619; and father of Thomas, *second* Earl of Kellie. Obiit, Feb. 1633.

³ John, *eighth* Lord Hay of Yester, created *first* Earl of Tweeddale, Dec. 1, 1646. ⁴ Of Menstrie, the celebrated Peet, who obtained a Grant of Nova Scotia, in America, by Charter, Sep. 10, 1620. He was created Viscount of Stirling, &c., Sep. 4, 1630; and Earl of Stirling, Viscount of Canada, and Lord Alexander of Tullibody, June 14, 1623: and died at London, Feb. 1640, but was buried at Stirling, Apr. 12, 1641.

⁵ 'MR THOMAS ROSS, present Minister at *Cargill*, obtained a GIFT, under the Privy Seal, of THE VICARAGE OF CARGILL, with the fruits, rents, teinds, &c., and 'with the Manse and gleib thairof,' lying within the diocese of Dunkeld, and sheriffdom of Perth; 'during all the dayis of his lyfityme.'—*Register of Presentations to Benefices*, Vol. III, Jul. 26, 1606.

sedentary or useful handicraft. On the contrary, they have literally wandered from place to place, seldom remaining above a few days in one spot, "living in tents," and subsisting by plunder or knavery.

In those kingdoms, where they have effected a steady footing, they have all along been distinguished by the name of BOHEMIANS, GITANOS, ZINGARI or CINGARI, ZIGEUNERS, TZINGANYS, GIPSIES, and EGYPTIANS.

As so much has been written regarding the origin and history of the Gipsies, by *Hoyland*, *Grellmann*, &c.¹ it is only necessary to premise these facts, in the briefest manner. The reader will find several very curious and interesting essays on the history of the Scottish Gipsies, written in a popular and entertaining form, in the two first volumes of *Blackwood's Magazine*, and also in the *Encyclopædias*. The Editor has just been informed, that a work is at present preparing for publication, which professes to embrace all that is known regarding the history of these wanderers, especially in the various districts of Scotland, which renders it still less necessary to enlarge in this place.

It may be remarked, that in the fifteenth century, THE EGYPTIANS uniformly, in the numerous countries to which they migrated, gave themselves out to be *Christian Pilgrims*—and their leaders assumed the titles of KINGS, DUKES, COUNTS, or LORDS of LITTLE EGYPT; from which country they always pretended they had been expelled by the *Saracens*, on account of their RELIGION. Certain it is, that at present they appear to profess *no religious belief whatever*, and they lead the most immoral lives, and herd together like hordes of savages, in a promiscuous state, wholly unknown to any other race now extant in Europe, living "without God and without hope in the world." With their characteristic cunning, it is likely that this assumption of the appearance of *Pilgrims* was only in accordance with the superstitious and prevailing customs of the times. Under this character they had the address to impose upon almost all the Sovereigns of Europe, and obtained passports and privileges from them; and even THE POPE himself was not protected from their artifices, by his boasted *infallibility*.

In examining the Books of *the Lord High Treasurer* of Scotland, the following entries occur. They are here laid before the reader, without further comment.

' Jul. 17, 1492. Item, to Peter Ker to passe to THE KING² to the Hwnthall,³ to get the Letteris subscrivit to THE KING OF ROWMAIS, iiij f.

' Jul. 19. Item, to THE KING OF ROWMAIS messinger, at the Kingis command, xx li.

' Maij 2, 1501. Item, to *Peter the Moryene*,⁴ quhen he passit his way to France, iij li. x f.

¹ *Hoyland's Survey of the Gipsies*—*Grellman*. *Hume on Crimes*. *Mackenzie's Obs. on the Statutes*, &c. See also *Acta Parl.*; *Burnet's Hist. of Reformation*, &c. ² JAMES IV. ³ Of Glenfynlas, or Glenartnay, where the King was in use to resort at that season of the year. ⁴ It appears by other entries in the Records, that this person, and certain '*More lasses*,' were minstrels and servants to the Queen.

‘ Maij 10, 1502. Item, to THE ERLE OF GRECE, be the Kingis command, xiiij f.

‘ Jun. 28. Item, to ANE KNYCHT OF GRECE, be the Kingis commande, vij lib.

‘ Item, for ane ring of gold, fet with ane dyamant, and tua rubyis, in maner of *flour de lice*, iiij lib.

‘ Feb. 24, 1503. Item, in Drumfreife, to *Peter the Moriene*, ix f.

‘ Dec. 11, 1504. Item, quhen *the More las*¹ wes cristinit, giffin to put in the caudill, ix f.

‘ Apr. 22, 1505. Item, to THE EGYPTIANIS, be THE KINGIS command, vij lib.

‘ 1530. Item, to THE EGIPTIANIS that danfit before THE KING, in Haly-rudhous, xl. f.’

These are the only early notices the Editor has hitherto met with, in that valuable Record. It is very probable, however, that some of them have no reference to Egyptians. A variety of other documents have been obtained from the Records of the Privy Seal, &c., which follow this brief and imperfect notice.]

I. LETTER *from King James IV. to the King of Denmark, in favour of Anthony Gawin, Earl of Little Egypt, &c. Anno 1506.*²

ILLUSTRUSSIME, &c. ANTHONIUS GAWINO, EX PARVA EGYPTO COMES, et cætera ejus comitatus, gens afflicta et miseranda, dum Christianam orbem peregrinationes studio Apostolicæ Sedis (ut refert) jussu, suorum more peregrinans fines nostri regni dudum advenerat, atque in fortis sue et miseriarum hujus populi, refugium, Nos pro humanitate imploraverat ut nostros limites sibi impune adire, res cunctas, et quam habet societatem libere circumagere liceret. Impetrat facile quæ postulat miserorum hominum dura fortuna. Ita aliquot menses bene et catholice, (sic accepimus,) hic versatus, ad te, REX et Avuncule, in DACIAM transitum parat. Sed Oceanum transmissurus nostras Literas exoravit, quibus celsitudinem tuam horum certiores redderemus, simul et calamitatem ejus gentis Regiæ tuæ munificentiae commendaremus. Ceterum errabundæ EGYPTI fata, moresque et genus eo tibi quam nobis credius notiora quo EGYPTUS tuo regno vicinior, et major hujusmodi hominum frequentia tuo diversatur imperio. Illustrissime, &c.

II. LETTER, *under the Privy Seal, by King JAMES V. in favour of ‘ Johnne Faw, Lord and Erle of Little Egypt.’*³ Feb. 15, 1540.

JAMES, be pe grace of God, King of Scottis : To oure Schereffis of Edinburghe, principall, and within the constabularie of Hadingtoun, Berwik, Roxburghe, Selkirk, Perth, Forfar, Fife, Clakman-nane, Kinrose, Kincardin, Abirdene, Banf, Elgin and Fores, Narne, Innernese, Linlithq^w, Peblis, Striviling, Lanark, Renfrew, Dunbertane, Air, Drumfreis, Bute, and Wigtoun ; Stewartis of Annan-derdale, Kirkcudbrycht, Menteithe, and Stratherne ; Baillies of Kile, Carrik, and Cunynghame ; and paire deputis ; Provestis, aldermen, and baillies of oure burrowis and cieteis of Edinburgh, Hadingtoun, Lawder, Jedburgh, Selkirk, Peblis, Perth, Forfar, Cowper, Sanctandros, Kincardin, Abirdene, Banf,

¹ Dec. 2, 1512, she is styled the ‘ *QUENIS blak madin*,’ and on Feb. 1612-13, ‘ *Blak Elene*.’ And on Jul. 19, 1513, ‘ *Blak Margaret*’ gets a payment of xlvij s. They do not appear to have been Egyptians, but Negroes. The notices, however, are so curious that they are given along with the rest. ² *MS. Reg. 13. B. II.* Taken from *Pinkerton’s Hist. of Scotland*, quarto, Lond. 1797, vol. ii. p. 444. ³ *Reg. Secr. Sig. xiv.*, 59. A very unfaithful transcript of this document had formerly been published in the Appendix to *Maclaurin’s Criminal Trials*.

Elgin and Fores, Narne, Innernefe, Linlithq^w, Striuling, Lanark, Glasg^w, Ruthirglenne, Renfrew, Dunbertane, Air, Drumfreis, Wigtoun, Irwyne, Kirkcudbricht, Quhitterne; and to all vperis Sche-reffis, Stewartis, proveftis, auldermenne, and bailleis within oure realme, greting. FORSAMEKILL as it is huimlie menit and schewin to ws be oure louit, JOHNE FAW, LORD AND ERLE OF LITILL EGIPT; That quhair he obtenit oure Lettres vnder oure grete feile, direct to 3ow, all and findry oure saidis Schereffis, ftewartis, baillies, proueftis, aldermen, and baillies of burrois, and to all and findry vpiris havand autorité within oure realme, to affist to him in executioun of justice vpoun his cumpany and folkis, conforme to pe lawis of EGIPT, and in puniffing of all paim pat rebellis aganis him: NEUIR-PELES, as we ar informyt, SEBASTIANE LALOW, Egiptiane, ane of pe said Johnnis cumpany, with his complices and pairt-takaris vndir-writtin, pat is to say, ANTEANE DONEA, SATONA FANGO, NONA FINCO, PHILLIP HATFEYGGOW, TOWLA BAIL3OW, GRASTA NEYN, GELEYR BAIL3OW, BERNARD BEIGE, DEMER MATSKALLA, NOTFAW LAWLOWR, MARTYNE FEMINE, rebellis and confpiris aganis pe said JOHNE FAW, and hes removit pame alluterly out of his cumpany, and takin fra him diuerse fowmes of money, jowellis, claithis, and vpris gudis, to pe quantité of ane grete fowme of money, and on na wyfe will pafs hame with him, howbeit he has biddin and remanit of lang tyme vpoun pame, and is bunding and oblist to bring hame with him all pame of his company pat ar on live, and ane testimoniale of pame pat ar deid: And als, pe said JOHNE hes the said SEBASTIANIS Obligatioun, maid in Dunfermling, befor our Maister houffald, pat he and his cumpany fuld remane with him, and on na wyfe depart fra him, as the famin beiris. In contrar pe tenour of pe quhilk, pe said SEBASTIANE, be finifter and wrang informatioun, fals relatioun, and circumventioun of ws, hes purchest our writingis, discharging him and pe remanent of pe personis aboue writtin, his complices and pairt-takaris of the said JOHNNIS cumpany, and with his gudis takin be pame fra him, cauffis certane our liegis affist to pame and pair opinionis, and to fortify and tak pair pairt aganis pe said JOHNE, pair lord and maister; fua pat he on na wyfe can apprehend nor get pame to haue pame hame agane within paire awin cuntré, eftir pe tenour of his said Band, to his hevy dampnage and skaithe, and in grete perell of tynfall of his heretage, and expres aganis justice. OUR WILL IS HEIRFOR, and we charge 3ow straitlie, and commandis, pat, incontynent pir our Letteres sene, 3e and ilk ane of 3ow, within pe boundis of 3our Offices, command and charge all our liegis pat nane of paim tak vpoun hand to refset, affist, fortify, supplé, manteine, defend or tak pairt with pe said SEBASTIANE and his complices aboue writtin, for na buddis nor vper way, aganis the said JOHNE FAW, pair lord and maister; bot pat pai, and 3e, inlikwise tak and lay handis vpoun pame quhareuir pai may be apprehendit, and bring paim to him to be pvnist for pair demeritis, conforme to his lawis: And help and fortify him to pvnis and do justice vpoun pame for pair trespaffis: And to pat effect, len to him 3oure presonis, ftokis, fetteris, and all vper thingis necessar pairto, as 3e and ilk ane of 3ow, and all vperis oure liegis, will ansuer to ws pairupoun, and vnder all hieaft pane and charge pat eftir may follow; fwa pat pe said JOHNE have na caus of complaynt heirupoun in tyme cuming, nor to resort agane to ws to pat effect, nochtwithstanding ony oure writings finifterly purchest, or to be purchest, be pe said SEBASTIANE, in pe contrar. AND ALS, charge all oure liegis, pat nane of paim molest, vex, inquiet, or trouble pe said Johnne Faw and his cumpany, in doing of pair lefull besynes, or vperwayis, within our realme, and in pair passing, remanyng, or away-ganging furth of pe samyne, vnder pe pane aboue writtin: And ficlike, pat 3e command and charge all skippars, maisteris, and marinaris of all schippis within oure realme, at all Portis and Havynnis quhair pe said JOHNE and his cumpany salhappin to resort and cum, to resaeue him and pame pairin, upoun pair expenses, for furing of pame furth of oure realme to pe partis bezond sey: As pai and ilk ane of pame ficlike will ansuer to ws pairupoun, and undir pe pane forsaid. SUBSCRUIT with oure hand, and under oure Priue Seile, AT FALKLAND, pe fiveteine day of Februar, and of oure reigne the xxviiij 3eir.

Subscript. per Regem.

[JAMES R.¹]

¹ *Reg. Sec. Sig. XIV. f. 59.*—Vide also Apr. 25, 1553, and Apr. 8, 1554, Remission of Andro Faw, &c., for murder of Ninian Smail.

III. PRECEPT *to the Earl and Lord of Little Egypt; granting power to him to hang and punish all Egyptians within the Kingdome of Scotland. Dated, May 26, 1540.*

PRECEPTUM Litere JOHANNIS WANNE, filii et heredis quondam JOHANNIS FALL, MINORIS EGIPTI COMITIS ac DOMINI, et MAGISTRI EGIPTIORUM, infra REGNUM SCOTIE existen.—DAN. fibi potestatem predictos EGIPTIOS ad fibi obediend. et parend. plectere et punire, &c. APUD ST ANDROS, Maii 26, 1540.¹

IV. ACT *of the Lords of Council, relative to JOHN FAW,² &c. Jun. 6, 1541.*

THE quhilk day, anentis the complaintis gevin in be JHONE FAW, and his brether, and SEBASTIANE LOWLAW, EGIPTIANIS, to THE KING'S Grace, ilkane pleinzeand vpoun vther of diverse faltis and iniuris: And that it is aggreit amang thame to passe hame, and to haue the same decydit before THE DUKE OF EGYPT: The Lordis of Counsale, being avisit with the pointis of the saidis complaintis, and vnderstanding perfittlie the gret thiftis and scathis done be the saidis EGIPTIANIS vpoun our soverane lordis liegis, quhaireuer thai cum or resortis: ORDANIS Lettres to be direct to the Provestis and Ballies of Edinburgh, Sanct Jhonstoun, Dundee, Monrofe, Aberdene, Sanct-androis, Elgin, Forrefe, and Inuernese; and to the Schirefis of Edinburgh, Fif, Perth, Forfair, Kincardin, Aberdene, Elgyn, and Forese, Banf, Crummarty, Inuernese, and all vtheris Schirefis, stewartis, provestis, and ballies, quhair it happinnis the saidis EGIPTIANIS to resort,—to command and charge thame, be oppin proclamatioun at the mercat croces of the heid Burgh of the Scherefdomes, to depairt furth of this realme, with their wisis, barnis, and companeis, within xxx dayis efter thai be charget therto, vnder the pane of deid: Notwithstanding ony vtheris Lettres or privilegis grantit to thame be the Kingis grace: Becaus his Grace, with avise of the Lordis, hes dischargit the famin, for the causis foirfaidis; with certificatioun, and³ thai be fundin in this realme, the saidis xxx dayis being past, thai salbe tane and put to deid.

V. RESPITE, *granted to the Captain of the Egyptians and his three sons, for the Slaughter of Ninian Smaill.⁴*

ANE RESPITT maid to ANDRO FAW, CAPITANE OF THE EGIPTIANIS, GEORGE FAW, ROBERT FAW, and ANTHONY FAW, his sons; for airt and pairt of the Slauchter of umquhile NINIANE SMAILL, fervand to John Lard, Smith; committit and done in the moneth of Marche, the yeir of God Im.Vc. liij yeiris, upon suddantie: and for all action and cryme that may follow thairupoun: And for the space of xix yeiris to indure. AT LYNLYTHGOW, the xxij day of March, 1553.

VI. RESPITE *to John Faw, and other Egyptians, for the above-mentioned Slaughter. Apr. 8, 1554.⁵*

ANE RESPITT maid to JOHNN FAW, EGIPTIANE, ANDRO GEORGE, NICHOLAH GEORGE, SEBASTIANE COLYM, GEORGE COLYM, and uthers EGIPTIANIS, now being within this realme; for arte and parte of the Slauchter of umquhile Niniane Small; committit within the toun of Lintoun—19 years. AT LINLYTHGW, Apr. 8, 1554.

VII. ACT *of Privy Council, 'anent some Egiptianis.' Nov. 10, 1636.⁶*

APUD ED^B, 10 Novembris, 1636. FORSAMEIKLE AS SIR ARTHURE DOUGLAS of Quhittinghame haveing latelie tane and apprehendit some of the vagabound and counterfut theives and limmars, callit EGIPTIANIS, he presentit and delyverit thame to the Shereff-principall of the shirefdome of Edinburgh, within the constabularie of Hadington, quhair they have remained this month, or thairby; And

¹ This short entry is all that occurs in *Reg. Secr. Sig.*, under the above date. ² *Acta Dom. Con.*, XV., 155.
³ If; an. ⁴ *Reg. Secr. Sig.*, XXVII., 3. ⁵ *Reg. Secr. Sig.*, XXVII., 36. ⁶ *Reg. Secr. Concilii*.

quhairas, the keeping of thame longer within the faid Tolboith, is troublefome and burdenable to *the toun of Hadington*, and fosters the faids theives in ane opinion of impunitie, to the incourageing of the rest of that infamous byke¹ of lawles limmars to continow in thair theivish trade: THAIRFOIR, *the Lords of Secret Counsell* ORDANS *the Shireff of Hadinton* or his deputs to pronunce DOOME and SENTENCE OF DEATH aganis so manie counterfoot Theives as ar men, and aganis so manie of the weomen as wants children, ORDANING the men to be HANGIT, and the weomen to be DROWNED: and that fuche of the weomen as hes children to be SCOURGIT throw the burgh of Hadinton and *Brunt in the cheeke*: And Ordanis and commandis the Proveft and Baillies of Hadinton to caus this doome be execute vpon the faidis perfons accordinglie.

No. VI.

OFFICES OF THE CLERKSHIP OF JUSTICIARY-GENERAL AND MASTER OF
THE CEREMONIES, &c.

(See Vol. III., p. 558.)

[IN reference to the preceding entry in the Record, it may be interesting to insert the following singular Letter from Mr Alexander Colville, Justice-Depute, to Viscount Annan, which has been recovered from *Sir James Balfour's MS. Collections*, on account of its throwing some farther light on those important appointments; and besides, it is a curious document, and is highly characteristic of the parties concerned, and of the spirit of those times. It has also been thought proper to present to the reader a notice which occurs in the Books of Adjournal, containing the appointment of Sir George Elphinstoun of Blytheswood, knight, as Sir Archibald Napier's successor, in the first year of the reign of KING CHARLES I.]

I. LETTER,² *Mr Alexander Coluile, Justice-Depute, to Viscount Annan.*³
Dec. 20, 1622.

RIGHT HONORABLE,

YOUR Lo. shall be advertiffed that he who is presentlie JUSTICE CLERC, (*the Lard of Ormestoun*), is so afflicted with extreame aage, blindnes, and vther infirmities, that he is altogether disinabled ather to valk abrod, or discharge his place; and by all appearance, is not long to survive. And becawfe it concernes me so neir, that feruis HIS MATIE as Justice deput, to be veil or ewill yoked,⁴ in cace it pleis God that I liwe, I haue aduentured thir few lynis, being confident of your lo. goodnes, that HIS MATIE, by your lo. information, micht be the better prepared aganis the importunitie of vnfit futors⁵ for that place (of Justice clerk), quhilk aucht nocht to be giwen to thois that futt⁶ it, bot to thois that

¹ Usually applied to denote a hive or nest of wasps, wild bees, or hornets.

² *Denmylne MSS. Adv. Library.*

³ Sir JOHN MURRAY, a *protégée* of the Earl of Morton, and a distinguished favourite at Court, was successively Gentleman of the Bedchamber, and Master of the Horse, &c. to James VI. He acquired great wealth and estates; and was created VISCOUNT OF ANNAND, and Lord Murray of Lochmaben; and afterwards EARL OF ANNANDALE, Mar. 13, 1624-5. ⁴ Well or ill yoked; having a good or bad partner, or coadjutor. ⁵ Suitors; applicants. ⁶ Petition for.

ar vorthie of it. And as the lywis of men ar mor pretious then their goods, so lett the vorthines of him be respected, to quhome the lywis of men ar to be trusted; for if he quho is to be inclosed with Affyfors, (quha for the most ar rud and ignorant,) depending much vpone THE (Lord Justice) CLERC his informatioun; if he, I say, be not a found conscientious man, and frie of baife bribrie, he may prove a pernicious instrument, and be the cawse that iniquitie may be committed; as wee haue zit in memorie, of on THOMAS SCOT of *Abotishall*, quho was Justice Clerk to KING JAMES THE FYFT, of happie memorie, quho being strukin with a terror of conscience, at the hour of his death, for his ewill cariage in that place, dyed in disperatioun, crying, 'I am damned! I am damned!' Zit among all vperis, young men, and men of great CLANNIS ar most dangerous for that place. Ceacing farther to fasche your lo. earis, and referring all to your lo. prudence; vishing, that, by a happie election of such ane Officiar, God may gett glorie, HIS MA^{TIE} contentment, and the people securitie, by getting right quhen thair lywes shall be in question, and your lo. praise and thankis for being a good instrument. Thus, resting confident that your lo. will tak my boldnes in good part, I rest,

Your lo. affectioned and humble seruitour,

Ed^a, 20 Dec. 1622.

A. COLVILLE.

To the right honorable his speciall good lord, MY LORD VICOUNT OF ANNAN.

II. EXTRACT from the Books of Adjournal, Dec. 2, 1625.

(Dec. 2, 1625.)—SIR GEORGE ELPHINSTOUN of Blythifwoid, kny^t, ane of the Lordis of his Maiesteis Previe Counfall, producet ane Gift, grantit to him be our lait souerane lord, James the saxt, of most happie memorie, vnder his hienes Previe Seill, off THE OFFICES of 'CLERK of OUR JUSTICIARIE GENERALL, AND MAISTER OF CEREMONEIS at the Creatioun of all Erles, Lordis, and Barrones, and of all vther soleme Affembleis, quhair honourable Ceremoneis ar accustomet and necessar to be vsed, within this our said Kingdome of Scotland.—Qubilkis Offices ar now vacand in our handis and at our gift and dispositioun, be dimissioun maid thair of in our handis be SIR ARCHIBALD NAPER of Merchistoun, kny^t, thesaurer deput of our said kingdome of Scotland.' Dated 'AT BISSAME, the nyne and tuentie day of August, the zeir of God 1624, and of our regne the 58 and 22 zeiris.'

The said Sir George gaif his aithe *de fidei administratione* in the said Clerkschip of Justiciarie, in presence of the said Justice depute.

No. VII.

REMARKABLE EXAMINATIONS AND CONFESSIONS OF PERSONS ACCUSED OF WITCHCRAFT, SORCERY, &c.

[AMONG the circumstances which peculiarly characterize the earlier Criminal proceedings of SCOTLAND, as well as those of ENGLAND, FRANCE, and GERMANY, &c., none are more prominent than the unmitigated rigour with which the profession as well as the practice of Witchcraft, Sorcery, and Necromancy, were punished. The hecatombs of innocent victims, whose lives were sacrificed to satisfy the gloomy superstitions of Nations termed Christian and civilized, but

who, in reality, were only emerging from a state of semi-barbarism, sufficiently attest the justice of this observation.

After the period of the Reformation from Popery, the Legislators of those countries which had embraced the new Religion, seemed to vie with each other in the zeal which they manifested in 'rooting out from the land' every vestige of the professors of these 'works of darkness.' In Scotland, as the reader has already had sufficient opportunity of remarking, great exertions were made during the reign of KING JAMES VI, when hundreds of helpless creatures were destroyed, under form of law,—for those who were tried before THE HIGH COURT OF JUSTICIARY bore a very small proportion to the very great numbers who were tried and condemned by the LORDS OF REGALITIES, BARON BAILIES, and by the ROYAL COMMISSIONERS. A very striking fact, mentioned by *Baron Hume* in his valuable Commentaries,¹ may be here briefly noted, that 'no fewer than *fourteen* Commissions² for Trial of Witches were granted, for different quarters of the country, *in one sederunt*, of the 7th of November, 1661; which year seems to have been the most fertile period of this sort of accusation!' It is proper to remark, that such Commissioners had very ample powers granted to them; for their Commissions were expressly conceived for the examination and trial, &c. of so many persons, *nominatim*, and a large blank was commonly left for the insertion of such other persons as might be 'de-laited,' or accused, during their sittings. Besides this, their jurisdiction extended over considerable districts of country. As one unhappy creature was almost universally induced to accuse *several others* of the same crime for which he or she was to suffer, and as the evidence taken in one Trial was held to be conclusive in other cases, where the pannels were thus proved to be 'notour Witches,' it was competent for these Commissioners to try any number of persons, and to 'justify them to the death;' a practice which they were by no means slack of performing.

Many very painful Trials for Witchcraft, &c. have already been laid before the reader; but perhaps there cannot be adduced a more touching proof of the nefarious wickedness which must have been perpetrated in Scotland, during the reign of KING JAMES VI, than the following memorandum, which is preserved by *Thomas, Earl of Haddington*, (a noted instrument of the King in all cases, of whatever description,) in his Minutes of Privy Council proceedings.³ He relates, under date December 1, 1608,—'THE ERLE OF MAR declairit to THE COUNSALL, that sum women wer tane in *Broichtoun*, as WITCHES; and being

¹ HUME on *Punishment* for Crimes, II., 559.

² Granted by the Lords of Privy Council.

³ *Haddington MSS.*, A. 4, 22. Adv. Library. While *Sir Thomas Hamilton*, he held the great Offices of *Secretary of State*, *Lord Advocate*, *President of the College of Justice*, &c.; and in all of those stations forwarded his master's views with unremitting zeal and ability.

put to ane Afflyse,¹ and convict, albeit thay perseverit constant in thair denyell to the end, zit *thay wer BURNIT QUICK,*² *eftir sic ane crewell maner, that sum of thame deit in despair, renunceand*³ *and blasphemand; and vtheris, HALF BRUNT, brak out of the fyre, and wes cast in QUICK in it agane, quhill*⁴ *thay wer brunt to be deid.'*

It is hardly necessary to remind the reader, that matters were no better in ENGLAND; where, as he must perfectly recollect, the most shocking atrocities were perpetrated, during the reigns of CHARLES I and CHARLES II, and also under the Puritans of OLIVER CROMWELL's time. The infamous proceedings, publicly authorized, of HOPKINS *the Witch-finder*, and other worthless impostors, who pretended to be able, by certain cruel means practised by them, to detect real and counterfeit Witches, are also well known, and are highly calculated to bring discredit on the judicial proceedings of any country. Upon the evidence of these wretches, added to that of the ignorant and superstitious peasantry, and of the equally superstitious Clergy of those times, the lives of hundreds were wantonly sacrificed, to satisfy their diseased appetite for the marvellous; while other misguided individuals, conscientiously no doubt, thought, that by acting thus, they were 'doing God service.'

SIR WALTER SCOTT having so largely discussed this extraordinary subject in his recent work on Demonology and Witchcraft,⁵ it would be as presumptuous as it is unnecessary for the Editor to enter farther into the matter. In that curious and able work, the learned author, in his usual felicitous style, notices numerous Examinations and Confessions of persons accused of Witchcraft, in Scotland, in the sixteenth and seventeenth centuries. Of these, the most remarkable documents unquestionably are the Confessions of ISSOBELL GOWDIE and of JANET BREADHEAD; which, indeed, may safely be pronounced to be by far the most *unique* and wonderful, in the Records of this, and perhaps of any other country. The Editor has been induced, in compliance with the repeated desire of literary friends, contrary to his own private opinion, to annex to this work the CONFESSIONS of these unhappy women, and a few other similar EXAMINATIONS. Such declarations were commonly taken before Presbyteries, or certain Special Commissioners, who usually ranked among their number the leading Clergy of those districts where their hapless victims resided. The details of all such cases, and, in particular, those which are now annexed, are repulsive and shocking to every well-regulated mind; but, as recording the superstitions and crimes common at the period in question to all the civilized

¹ Before the Baron Bailie of the Regality of BROUGHTON, near Edinburgh; one of the most extensive jurisdictions, of that description, in Scotland. ² ALIVE; *i. e.* without having been previously 'wirreit,' or strangled. ³ Renouncing their baptism. ⁴ Until. ⁵ LETTERS on Demonology and Witchcraft, by *Sir Walter Scott, Bart.* Lond. 1830.

nations of Europe, they will by many be deemed, in some measure at least, of historical importance ; although at same time, it must be confessed, they afford a lamentable exhibition of the human mind, at its lowest ebb of degradation.]

I. DEPOSITION of *John Kincaid (Witch-finder)*,¹ relative to the *Devil's mark* found on *Patrik Watson* and *Manie Halieburton*.²

AT DIRLTON,³ of zeiris. The quhilk day, in prefence of All(exan)der Levingtone of (Salt)coitis, James Borthuik, Chalmerlane of Dirlton, Johne Stalker, bailzie thair, James Foirman, Drem, Mr James Achesoun, in North Beruik, and Williame Daliell, notar, PATRIK (WAT)SON, in West Fentoun, and MENIE HALLYBURTON, his spous, bruited and long suspect (of) Witchcraft, of thair awne fre-will, vncompellit, heiring that I, *Johne Kincaid*, vnder subscryvand, wes in the toune of *Dirltone*, and had some skill and dexteritie in trying of THE DIVELLIS marke, in the personis of such as wer suspect to be WITCHES, came to the *Broadhall*, in the *Castell of Dirlton*, and desyrit me, the said *Jo. Kincaid*, to vse my tryall of thame, as I had done on vtheris ; whilk when I had done, I fand the *Divellis marke* vpon the bakfyde of pe said PATRIK WATSON, a little wnder the point of his left shoulder, and vpon the left fyde of the said MENIE HALLIBURTON hir neck, a little aboue hir left shoulder ; whair of thay war not sensible, nether came furth pairof any bloode, efter I had tryed the famen als exactlie as euer I did any vthers. This I testifie to be of veritie, vpone my credite and conscience. IN witnes quhairof, I have subscryvit thir presentis with my hand, day and place foirlaid, befor thir witneffis aboue specifit.

(Sic subscribitur.) J. K. ALEX. LEVINGTON, witnes. JA. BORTHUIKE, witnes.
JOHNE STALKER, witnes. JAMES FORMAN, witnes. M. J.
ACHESONE, witnes. W. DALIELL, witnes.

(Indorsed.) Testificat of J(ohnne Kincaid,) finding the witches mark vpone Manie Haliburtoune.

II. CONFESSION of *Manie Haliburton*.⁴

AT DIRLTOUN, the ⁵ of, 1649. In prefence of Johne (Stalker) bailzie of Dirlton, James Levington, thair, Joⁿ in Lawhill, thair, James Speir, Richard Fergusson, Wa. Hanady, and Wa. Daliell. Compeirit MANIE HALLIBURTON, prisoner within the *Castell of Dirlton*, suspect of the cryme of Witchcraft, dilaited guiltie be AGNES CLERKSON, lait sufferrar for the said cryme, as also be PATRIK WATSON, spous to the said Menie, who lykevysse sufferit thairfoir ; and confessit, that auchtein yeir syne, or thairby, hir dochtir being feik, scho first sent for *Patrik Crystifone in Abirladie*, to cum and cure hir dochter, and he refusing, went hirself for him, who refused to cure hir ; and within ⁶ dayis thairefter came the DEVILL, in licknes of a man, to hir hous, calling himself a phisition, and said to hir, that he had goode falves (and namelie oylyspek⁷) whairwith he wold cure hir dochtir ; and aggrieing with him for some of his falves, quhilk he gave hir, sho gave him tuo Inglis shillingis : He than depairted, and promised to come agane within eight dayes, whilk accordingle he did ; bot or ⁸ he went away the first tyme, she gave him milk and breade ; and *Patrik Watfone* comeing in, he sent for a pynt of Ale : Bot at the second comeing, he stayit all night, and vpone the morne airle (*Patrik* being furth) in came the DIVELL and lay down with hir, (scho being 3it in bed,) and had carnall copulation with hir, his nature being cold : He desyreit hir to renunce Christ and hir baptisme, and become his servand ; quhilk scho did : And sayes, that hir dochter had

¹ From Original, in General Register House, Edinburgh.

² He is elsewhere designed 'the commoun pricker.'

³ Obliterated in Orig.

⁴ From Orig. Gen. Register House.

⁵ Obliterated.

⁶ Left blank in Orig.

⁷ Oil of spike or spikenard.

⁸ Ere ; before.

the wyte¹ of all hir wicid(nefs);² wiffing fho had nevir bene borne.—THIS Deposition was renewed, in all the particulars, by the faid *Manie*, in the forsaide place, on Sunday the first of Julij, 1649, before Alex^r Levingtoun of Saltcottis, James³., Johne Stalker,, W^m Daliell, and Mr Joⁿ Mc^cGhill, minister at Dirltoun.

M. J. MAKGHILL, ALEX. LEVINGTON, witnes; J. BORTHUIK, JAMES LAUDER, JOHNNE STALKER, W. DALIEL, WILLIAME DALIELL, WALTER MARSHALL.

Jul. 2, AT HADINTOUN. Whilk day, THE PRESBITERIE, having red and considered the former DEPOSITIONS and CONFESSION of *Manie Haliburton*, find the samyne a sufficient ground for futing⁴ the Judge competent to grant a Commission for trying and judging her according to Law.

J. STIRLING, Cl^k.

III. ACT OF PRIVY COUNCIL *anent Geillis Johnnstoun, suspected of the crime of Witchcraft.*⁵

ANENT our fouerane lordis Letteris, reasit at the instance of GELIS JOHNNSTOUN, relict of vmquhill Johnne Duncane in Muffilburgh, makand mentioun, That quhair some malicious personis, hir vnfreindis, haueing dilaitit her to THE PRESBITERIE OF DALKEITH, as a person suspect of WITCHCRAFT, the faid Prifbiterie hes thairvpone conuenit hir before thame, and hes haldin hir in proces before them, thir fevin oulkis⁶ bigane; albeit it be of veritie, that the faid complenair is ane honnest woman, who hes leuit thir threttie yeiris in the toun of Muffilburgh, in gude fame, credeit, and reputatioun; and wes nevir suspected nor bruted⁷ with ony fuche develifche and detestabill doingis; and fcho hes at all tymes presentit hir selff before the faid PRISBITERIE, quhan thay callit for her selff to thair tryall-examinationis, and quhatfumeuir forme of procedoure thay pleasit vse aganis hir: And althocht the cryme of Witchcraft be ane of the heich pointis of the Croune, proper to be tryit before his Maiesteis Justice and his deputis, and quhairin the faid PRISBITERIE can have no warrand, auctoritie, nor jurisdiction to cognosce or determine, neuirtheles, thay continewalie fufche⁸ the faid complenair with citationis and summondis to compeir before thame, purpoillie, as appeiris, to bring hir fame, credite, and reputatioun in questioun, and to lay vpoun hir this foull and haviie sclander of fa detestable a cryme, quhairof fcho is most innocent; and gif thay had ony presumptionis aganis the complenair of hir guiltynes of the faid cryme, thay sould haue gevin informatioun thairof, outhir⁹ to THE LORD OF REGALITIE quhair fcho duellis, before quhome the faid complenair hes fund cautioun to be anfuerable for this same deid, quhanevir fcho falbe callit; or then, to his heynes JUSTICE GENERALL and his deputis; and sould haue concurrit, be thair informatioun, to the persute of hir, and sould not haue vfit fuche a preposterous forme of proceeding before thame selffis, quhich can produce na kynd of sentence nor determinatioun. IN respect quhairof, THE MINISTERIS of the faid PRISBITERIE aucht and sould be dischargit of all proceeding aganis the faid complenair, in the mater above writtin, for the cauffis foirfaidis. AND anent the charge gevin to Mr Andro Blakhall, Minister at Inneresk; Mr Patrik Turnour, Minister at Borthuik; Mr William Penman, Minister at Creichtoun; Nathaniell Harlaw, Minister at Ormestoun; Mr Alexander Ambroise, Minister at Newbotle; Mr Johne Nymbill, Minister at Cranftoun; and Mr George Ramsay, Minister at Lesswaid; all MINISTERIS of THE PRESBITERIE OF DALKEITH, being conuenit for the tyme within the Kirk of Dalkeith, to haue compeirit be ane or tua of thair number, sufficientlie instructit, for the rest, before THE LORDIS OF SECRITE COUNSALE, this present day, to haue hard and sene thame dischairgit of all proceeding aganis the faid complenair in the mater foirfaid, and of thair officeis in that pairt: Lyke as, at mair lenth is contenit in the faidis Letteris, executiounis, and indorfationis thairof. QUHILKIS being callit, and the faid persewar com-

¹ Blame. ² Wickedness. ³ Obliterated. ⁴ Suiting; petitioning. ⁵ *Acta Secreti Consilii*,
General Register House, Edinburgh. ⁶ Weeks. ⁷ Reported. ⁸ Trouble. O. Fr. *fascher*. ⁹ Either.

peirand, be William Duncane hir sone, and Mr George Ramsay, Moderatour of the Presbiterie of Dalkeith; Nathaniell Harlaw, Minister at Ormestoun; Mr Patrik Turnour, Minister at Borthuik; and Mr William Penman, Minister at Creichtoun; with some vtheris of the said Presbiterie being personallie present, the reassonis and allegationis of the pairteis present being hard and considerit be the Lordis of Secrite Counsale, and thay ryplie aduifit thairwith, the Lordis of Secrite Counsale DISCHARGEIS the Ministeris of the said Presbiterie of all proceeding aganis the said Gelis Johnnstoun, in the mater foirsaid, and of all thair officeis in that pairt; and REMITTIS the said Geillis to be persewit and tryit, outhir before the Justice-Generall and his deputis, or before the Lord of the Regalitie of Dunfermling, as accordis of the Law; but¹ preiudice alwyse to the said Presbiterie to vse all ordinar and lauchfull meanis, quhairby thay may get tryall, be vtheris, of the said Gelis Johnnstoun hir practiceis and dealing in the said cryme of Witchcraft; and to gif informatioun thairto to the said Justice Generall and his deputis, or to the Lord of the Regalitie of Dunfermling and his deputis, before quhome justice salbe ministrat, conforme to the lawis of this realme.

IV. CONFESSION of Jonet Watsone; and Notices relative to Christiane Wilsonne and Jonet Paistoun, all accused of Witchcraft, June 1661.²

JONET WATSONE confessed, that in Apryle last bypast, or thairby, shoe being at the buriell of the Lady Dalhousie,³ ther was ane rix-dollar given to Jean Bughane, to be pairted among a certain number of poore folks, wherof shoe was one. And the said Jean Bughane did run away with the said money, so that schoe gott no pairt of it. And schoe come home to hir awne house, being verrie grieved and angrie at it, wished to have a mendse of Jean Bughane. Vpone the which THE DEIVILL apeired vnto her, in the liknes of ane prettie boy, in grein clothes; and asked, 'What aild her? And what amendse shoe wold have, he should give her.' And at that tyme THE DEIVILL gaive hir his markis; and went away from her in the liknes of ane blak doug:—And constantlie, for three dayis thairefter, ther was a great bee come to her; and vpone ane morning, when shoe was cheinging her schirt, it did sit down vpone her shoulder, (shoe being naked,) wher shoe had one of the markis.

As also, about the tyme of the last Baille-ffyre night, shoe was at a Meitting in Newtown-dein with THE DEAVILL, who had grein cloathes vpone him, and ane blak hatt vpone his head; wher schoe denyd Christ, and took her self to be the servant of THE DEIVILL. Wherfor shoe acknoweledged that schoe was, from her heart, sorrowfull for the doeing of it. And likewise, he then gave her a new name, and called her 'WEILL-DANCING JENOT'—and promised her money at the nixt Meitting.

And also, that vpone ane vther night, THE DEIVILL was verie heavie vpon her in her bed. As also, schoe confessed that Bessie Moffit, Elspeth Grahame, and Jenot Mikeljohn come to her house, and tooke her away to that Meating; when they all danced together: At which tyme, when schoe renounced her baptisme, THE DEIVILL laid his hand vpon her head, and bad her 'give all ower to him that was vnder his hand,' and shoe did so. Quhillk haill premisses shoe confessed, in presens of the vnder subscribers, without compulsione.

W. CALDERWOOD, (Minister of Dalkeith,) WILLIAME SCOTT, (Bailie of Dalkeith.)

AND. MACMILLONE, witnes. ROBT HARDIE, witnes. JOHNE FOORD, witnes.

HENRIE WILSONE, witnes. JA. CALDERWOOD, witnes. ALEX. A: D DICKSONES mark.

WILLIAM BRYSON, witnes. JA. VTERSIDE, witnes.

¹ Without. ² Original in MS. Coll. of Society of Antiquaries of Scotland. This Proof was led under a Commission, June 6, 1661, 'direct be THE KINGIS MAJESTIE, with consent of the Estaitis of Parliament,' to Sir William Murray of Newtoun, Sir James Richardson of Smeiton, Patrick Scott of Langschaw, Major John Biggar of Woolmot, &c.; who examined a great variety of WITCHES. Their CONFESSIONS, however, are uninteresting and commonplace, with the exception of this and the other Extracts which follow. ³ LADY MARGARET CARNEGIE, daughter of David, Earl of Southesk, spouse of William, Lord Ramsay, created Earl of Dalhousie, June 29, 1633.

V. DEPOSITION *as to the Devil carrying off a Witch in a Whirlwind, &c.*

AT DALKEITH, the 10 of Junij, 1661.—THE quhilk day, WILLIAM SCOTT, Bailiffe, haveing ordained some of the neighbours in the toune of Dalkeith to be in redines, the morrow eftir, for gardeing of CHRISTIANE WILSONE, a Witch, to Nidrie, to be confronted their by ane vther Witche; and Johne Steivin, being one of the number ordained to be in redines, said to JENNOT COOKE,¹ that he wes 'goeing the morrow to convoy the said CHRISTIANE to Nidrie,' as afoirsaid, and that he wold goe and mak his gun cleane, for that purpose; to the which Jennot answaired, 'Will not yow think it a sport, if THE DEIVILL raise a whirrell of wind, and tak her away from among yow by the gette² the morrow!' And it fell out, that in passing a burne,³ when they wer nigh Nidrie, their arose sutch a sudden tempest of wind, which was like to blow the compaignie off their foot—and it did blow the said Chrifstiane Wilfone down in the water . . . ⁴, so that for a long tyme they could not gett her vp againe—it being a faire and calme day, both befor and efter. WITNESSES, Johne Stevin, James Wilfone, candill maker, Thomas Richardfone, wright, Bessie Waker, Jonett Bruntoun, and James Blaikie, baxter.⁵

JOHNE STIWENE, witnes. James I. W. Wilfones mark.

VI. DEPOSITION of *John Kincaid, in Tranent, 'the comon pricker,' as to finding the Devil's mark on Jonet Paistoun.*

DALKEITH, 17 Junij, 1661.—THE quhilk day, JONET PAISTOUN, being dilaitit, as is afoirsaid, THE MAGISTRAT and MINISTER caused *Johne Kincaid*,⁶ in Tranent, *the comon pricker*, to prik her—and found tuo marks wpon hir, which he called THE DEVILL his markis, which appeared indeid to be so, for shoe did nather find the prein⁷ when it was put into any of the said markis, nor did they blood when they were takin out again. And quhan shoe was asked, 'Quhair shoe thought the preins wer put in?' Shoe pointed at a pairt of hir body distant from the place quhair the preins wer put in—they being preins of *thrie inches*, or pairabout, in lenth. Quhilk *Johne Kincaid* declairis upon his oath, and verifies by his subscription to be true. WITNESSES pairto, Mr W^m Calderwood, Minister at Dalkeith, and Williame Scott, Bailze: Martin Stevinsone and Thomas Calderwood, Elders; Major Archibald Waddell, Johne Hunter, David Douglas.

I. K. W. CALDERWOOD, Minister. WILLIAME SCOTT, Bailzie.
MARTIN STEVENSON, Elder. THOMAS CALDERWOOD, Elder.

VII. CONFESSIONS of *Iffobell Gowdie, spous to John Gilbert, in Lochloy.*

(1.) ISSOBELL GOWDIES FIRST CONFESSION.

AT AULDERNE,⁸ the threttein day of Aprill, 1662 yeiris. IN PRESENCE OF MASTER HARIE FORBES, Minister of the Gospell at Aulderne; WILLIAM DALLAS of Cantrey, Shereffe deput of the shereffdom of Nairne; THOMAS DUNBAR of Graing; ALEXANDER BRODIE, Y^r of Leathin; ALEXANDER DUNBAR of Boath; JAMES DUNBAR, appeirant therof; HENRIE HAY of Brightmanney; HEW HAY of Newtowne; WILLIAM DUNBAR of Clune; and DAVID SMITH, and JOHNE WEIR, in Aulderne; WITNESSES to THE CONFESSION efter specifreit, spokin furth of the mouth of ISSOBELL GOWDIE, *spous to Johne Gilbert, in Lochloy.*

THE quhilk day, in presence of me, JOHNE INNES, *Notar Publict*, and Witnesfes abownamet, all vnder subfcrywand, the said ISSOBELL GOWDIE, appeiring penitent for hir haynows finnes of Witch-

¹ Another Confessing Witch.

² By the way.

³ Rivulet.

⁴ Obliterated—but it looks like 'streyme.'

⁵ Baker.

⁶ The counterpart of the English *Mathew Hopkins*, the Witch-Finder, whose villainous impostures deprived many poor creatures of their wretched existence.

⁷ A long pin, or bodkin, which this fellow used for pricking.

⁸ A Parish and Burgh of Barony in the Shire of NAIRN, on the Murray Frith.

craft, and that sho haid bein ower lang in that service; without ony compulsitouris,¹ proceedit in hir CONFESSIONE, in maner efter following, to wit. As I was goeing betuix the townes² of *Drumdewin* and *the Headis*, I met with THE DIVELL, and ther covenanted, in a maner, with him; and I promeisit to meit him, in the night time, in *the Kirk of Alderne*; quhilk I did. And the first thing I did ther that night, I denyed my baptisme, and did put the on of my handis to the crowne of my head and the vther to the sole of my foot, and then renuncet all betuixt my two handis, ower to *the Divell*. He wes in the Readeris dask, and a blak book in his hand.³ *Margret Brodie*, in *Alderne*, held me vp to *the Divell* to be baptised be him; and he marked me in the shoulder, and fuked owt my blood at that mark, and spowted it in his hand, and, sprinkling it on my head, said, '*I baptise thé, JANET, in my awin name!*' And within a quhill we all remoowed. The nixt tym that I met with him ves in *the New Wardis of Inshoch*, and haid carnall cowpulation and dealling with me. He wes a meikle, blak, roch⁴ man, werie cold; and I found his nature als cold within me as spring-wall-water. Somtymes he haid buitis and somtymes shoes on his foot;⁵ but still his foot ar forked and cloven. He vold be somtymes with ws lyk a dear, or a rae. *Johne Taylor* and *Janet Breadhead*, his vyff,⁶ in *Belmakeith*, *Dowglas*, and I my self, met in *the Kirk-yaird of Nairne*, and ve raised an vnchristened child owt of its greaff; and at the end of *Breadleyis* corn-field-land, just opposit to *the Milne of Nairne*, we took the said child, with the naillis⁷ of our fingeris and toes, pikles of all fortis of grain, and blaidis of keall,⁸ and haked⁹ thaim all verie small, mixed altogither; and did put a pairt therof among the muk-heapes¹⁰ of *Breadleyes* landis, and therby took away the ffruit of his cornes, &c.; and we pairted it among two of our COEVENS.¹¹ Whan we tak cornes at *Lambes*,¹² we tak bot abowt two sheawes, whan the cornes ar full; or two stokis of keall, or therby, and that giwes ws the fruit of the corn-land, or keall-yaird, whair they grew:¹³ And it may be, we will keip yt while *Yewll* or *Pace*,¹⁴ and than devyd it amongst ws. Ther ar threttein perfones in my COVEN.¹⁵

The last tyme that ovr COVEN met, we, and an vther COVEN, wer dauncing at *the Hill of Earlseat*; and befor that, betwixt *Moynes* and *Bowgholl*; and befor that we ves beyond *the Meikle-burne*; and the vther COVEN being at *the Downie-hillis*, we went from beyond *the Meikle-burne*, and went besyd them, to the howffis at *the Wood-end of Inshoch*; and within a qwhyll went hom to our howffis. Befor *Candlmas*, we went be-east *Kinlossie*, and ther we yoaked an plewghe of paddokis.¹⁶ THE DIVELL held the plewgh, and *Johne Younge* in *Mebestowne*, our Officer, did drywe the plewgh. Paddokis did draw the plewgh, as oxen; qwickens wer sowmes,¹⁷ a riglen's horne wes a cowter,¹⁸ and an piece of an riglen's horne wes an fok. We went two feuerall tymes abowt; and all we of the COEVEN went still wp and downe with the plewgh, prayeing to THE DIVELL for the fruit of that land, and that thiftles and brieris might grow ther.

When we goe to any hous,¹⁹ we tak meat and drink; and we fill wp the barrellis with ovr oven²⁰

¹ Indicating, in the outset, that no TORTURE or compulsion had been resorted to, for the purpose of extorting Confession; but that she came forward, and voluntarily made her Declaration, bewailing her former offences. ² Farmsteadings.

³ It is a singular circumstance, that in almost all the CONFESSIONS of Witches, their initiation, and many of their meetings, are said to have taken place within CHURCHES, Churchyards, and consecrated ground; and a certain ritual, in imitation, or mockery, of the forms of the Church, is uniformly said to have been gone through.

⁴ Rough; hairy; hirsute. ⁵ Throughout this Confession, foot is used for feet. ⁶ See her Confession, which follows this, (No. VIII.) ⁷ Parings of the nails. In such incantations, the nails and joints, &c. of dead men were commonly made use of. ⁸ Kail-blades; the leaves of colewort. ⁹ Hacked; chopped. ¹⁰ Dung-heaps; middens.

¹¹ Companies; Witches' Conventicles. Perhaps from Lat. *convenire*. The word *cove* is still in use (in the Gipsy, flash, or slang Vocabulary) as an associate, *chum*, or companion, &c. ¹² Lammas: 1st August.

¹³ This symbolical mode of taking the fruit, crop, or produce of land, &c., is frequently alluded to in Witch-Trials. The soil apparently bore only straw and empty ears; but the real produce was, in due season, conveyed to the barns of the enchanter. The milk of a dairy was taken by means of a hair tether, rope, or halter, passing under the door, and attached to one of the stalls where the cattle stood, &c. The Witch procured the entire produce by 'milking the tether.' Another method is afterwards recited in this CONFESSION. ¹⁴ Until Christmas or Easter. ¹⁵ The number thirteen is still proverbially called 'the Deil's dozen,' in Scotland.

¹⁶ Yoked a plough of frogs. ¹⁷ Dog-grass, or quick-grass, served for sowmes or soams; being the traces, chains, or iron links, by which, of old, the oxen were yoked to the plough. The sowme (soyme) was fastened by a hook to the soule or sole (swivel.) ¹⁸ The coulter of the plough was formed of the horn of a half-castrated ram, called a riglen; q. d. a ridgel-ram. ¹⁹ Enter by stealth.

²⁰ Awin; own.

piſh again; and we put boofomes¹ in our beds with our huſbandis, till ve return again to them. We wer in the *Earle of Murreyes*² hous in *Dernvay*, and ve gott anewgh ther, and did eat and drink of the beſt, and browght pairt with ws. We went in at the windowes. I haid a little horſe, and wold ſay, ‘HORSE AND HATTOCK, IN THE DIVELLIS NAME!’³ And than ve vold flie away, quhair ve vold, be ewin⁴ as ſtrawes wold flie wpon an hie-way. We will flie lyk ſtrawes quhan we pleas; wild-ſtrawes and corne-ſtrawes wilbe horſes to ws, an⁵ ve put thaim betwixt our foot, and ſay, ‘HORSE AND HATTOCK, IN THE DIVELLIS nam!’ An quhan any fies thes ſtrawes in a whirlwind, and doe not fanc-tifie them ſelues,⁶ we may ſhoot them dead at ovr pleaſour. Any that ar ſhot be vs, their ſowell will goe to Hevin, bot ther bodies remains with ws, and will flie as horſis to ws, als ſmall as ſtrawes.⁷

I was in the *Downie-hillis*, and got meat ther from THE QWEIN OF FEARRIE, mor than I could eat. The *Qwein of Fearrie* is brawlie clothed in whyt linens, and in whyt and browne cloathes, &c.; and THE KING OF FEARRIE is a braw man, weill favoured, and broad faced, &c.⁸ Ther wes elf-bullis rowtting and ſkoylling wp and downe thair, and affrighted me.⁹

¹ Besoms; brooms.

² Alexander Stewart, fourth Earl of Moray.

³ THE following remarkable circumstances were communicated to the ingenious *John Aubrey, Esq., F.R.S.*, by one *Stewart*, a tutor in the family of JAMES, second LORD DUFFUS; from whose recital, *Stewart* states, he had it, and that his lordship had it from his father, *Alexander*, first Lord Duffus, who had, in like manner, heard the tradition from *William Sutherland of Duffus*, grandfather of *James, Lord Duffus*, who died about the year 1626. It closely corresponds with the particulars contained in the Depositions of *Isobel Gowdie* and *Janet Breadhead*, in reference to this branch of FAIRY SUPERSTITION. As *Aubrey's* work is now exceedingly scarce, little apology is required for quoting the interesting communication, which he has, fortunately, preserved at length:—

‘As soon as I read your letter of May 24, (1694,) I called to mind a story which I heard long ago, concerning one of the LORD DUFFUS (in the shire of Murray) his predecessors; of whom it is reported that, upon a time, when he was walking abroad in the fields, near to his own house, he was suddenly carried away, and found the next day at Paris, in the FRENCH KING's cellar, with a silver cup in his hand. That, being brought into THE KING's presence, and questioned by him, “Who he was?”—and “how he came thither?” He told his name, his country, and the place of his residence; and that on such a day of the month (which proved to be the day immediately preceding), being in the fields, he heard the noise of a whirlwind, and of voices crying “HORSE AND HATTOCK!” (this is the word which THE FAIRIES are said to use when they remove from any place;) whereupon he cried “HORSE AND HATTOCK!” also; and was immediately caught up and transported through the air, by THE FAIRIES, to that place: Where, after he had drank heartily, he fell asleep, and before he awoke, the rest of the company were gone, and had left him in the posture wherein he was found. It is said THE KING gave him the cup which was found in his hand, and dismissed him.

‘This story (if it could be sufficiently attested) would be a noble instance for your purpose; for which cause I was at some pains to enquire into the truth of it, and found the means to get the present Lord Duffus's opinion thereof; which shortly is, that there has been and is such a tradition; but he thinks it fabulous. This account of it his Lordship had from his father, who told him that he had it from his father, the present Lord's grandfather. There is yet an old silver cup in his lordship's possession still, which is called “THE FAIRY CUP,”—but has nothing engraven upon it except the arms of the Family.

‘The gentleman by whose means I came to know the Lord Duffus's sentiment of the foregoing story, being tutor to his lordship's eldest son, told me another little passage of the same nature, whereof he was an eye-witness. He reports, that when he was a boy at school, in the town of FORRES, yet not so young but that he had years and capacity both to observe and remember that which fell out, he and his school-fellows were, upon a time, whipping their tops in the Churchyard, before the door of the Church. Though the day was calm, they heard a noise of a wind, and, at some distance, saw the small dust begin to arise and turn round; which motion continued advancing till it came to the place where they were: Whereupon they began to bless themselves. But one of their number (being, it seems, a little more bold and confident than his companions) said, “HORSE AND HATTOCK WITH MY TOP!” And immediately they saw the top lifted up from the ground, but could not see what way it was carried, by reason of a cloud of dust which was raised at the same time. They sought for the top all about the place where it was taken up, but in vain; and it was found afterwards in the Churchyard, on the other side of the Church. Mr Stewart (so is the gentleman called) declared to me that he had a perfect remembrance of this matter.’—*Aubrey's Miscellanies*, p. 209.

⁴ Like; even as; in like manner as.

⁵ And; if.

⁶ The children in the kirkyard of Forres (see the preceding Note on HORSE AND HATTOCK) appear to have been adepts in this branch of the Fairy creed; which was, no doubt, familiar to all classes of the peasantry of Scotland, as numerous traces of it are to be found in various districts, at the remotest distance from each other. ⁷ The above details are, perhaps, in all respects, the most extraordinary in the history of WITCHCRAFT of this or of any other country. Any comment would only weaken the effect of such very remarkable descriptions. ⁸ It is a thousand pities that the learned Examinators have so piously declined indulging the world with the detailed description of these illustrious personages. Under the singularly descriptive powers of *Isobel Gowdie*, much might have been learned of FAIRY-LAND and its Mythology. ⁹ It is evident that *Isobel's* gossiping had again been cut short here, as irrelevant. Not so the more objectionable parts of her Confession, which were obviously drawn out of her, and listened to with the utmost complacency by her reverend inquisitors.

When we tak away any coves milk, we pull the tow, and twyn it and plaitt it in the vrong way, in *the Divellis* name; and we draw the tedder (fua maid) in betuixt the coves hinder foot,¹ and owt betuixt the coves forder foot, in *the Divellis* name; and therby tak with ws the koves milk. We tak sheips milk ewin fo. The way to tak or giev bak the milk again, is to cut that tedder. Whan we tak away the strenth of anie perfonas eall,² and giwes it to an vther, we tak a litle qwantitie owt of each barrell or stand of eall, and puts it in a stowp, in *the Divellis* nam; and, in his nam, with ovr awin handis, puttis it amongst an vtheris eall, and giwes her the strenth and substane and heall of hir neightbouris eall. And to keip the eall from ws, that we haue no power of it, is to sanctifie it veill. We get all this power from *the Divell*; and when ve feik it from him, ve call him 'owr LORD!'

Johne Taylor and *Janet Breadhead*, his wyff, in Bellnakeith, *Bessie Wilfone*, in Alderne, and *Margret Wilfone*, spows to *Donald Callam* in Alderne, and I, maid an pictur of clay, to distroy *the Laird of Parkis* meall³ children. *Johne Taylor* browght hom the clay, in his plaid newk;⁴ his wyff brak it verie small, lyk meall,⁵ and sifted it with a fiew,⁶ and powred in water among it, in *the Divellis* nam, and vrought it werie fore, lyk rye-bowt;⁷ and maid of it a pictur of *the Lairdis* fones. It haid all the pairtis and merkis of a child, such as heid, eyes, nose, handis, foot, mowth, and litle lippes. It wanted no mark of a child; and the handis of it folded down by its fydes. It was lyk a pow,⁸ or a flain gryce.⁹ We laid the face of it to the fyre, till it strakned;¹⁰ and a cleir fyre round abowt it, till it ves read lyk a cole.¹¹ After that, we wold rost it now and then; each other day¹² ther wold be an piece of it weill rosten. *The Laird of Parkis* heall maill children by it ar to suffer, if it be not gotten and brokin, als weill as thes that ar borne and dead already. It ves still putt in and taken out of the fyre, in *the Divellis* name. It wes hung wp wpon an knag. It is yet in *Johne Taylor's* hows, and it hes a cradle of clay abowt it. Onlie *Johne Taylor* and his wyff, *Janet Breadhead*, *Bessie* and *Margret Wilfones* in Alderne, and *Margret Brodie*, thair, and I, wer onlie at the making of it. All the multitud of our number of WITCHES, of all the COEVENS, kent¹³ all of it, at ovr nixt meitting after it was maid. And *the Witches* yet that ar vntaken, haw thair awin poweris, and ovr poweris quhilk we haid befor we wer takin, both.¹⁴ Bot now I haw no power at all.

Margret Kyllie, in, is on of the vther COVEN, *Meslie Hirdall*, spous to *Alexander Ross*, in Lonheid, is on of thaim; hir skin is fyrie. *Iffobell Nicoll*, in Lochley, is on of my COEVEN. *Alexander Elder*, in Earleseat, and *Janet Finlay*, his spows, ar of my COEVENS. *Margret Hasbein*, in Moynes, is on; *Margrat Brodie*, in Alderne, *Bessie* and *Margrat Wilfones*, thair, and *Jean Marten*, ther, and *Elspet Nishie*, spows to *Johne Mathow*, ther, ar of my COVEN. The said *Jean Mairten* is MAIDEN¹⁵ of ovr COVEN. *Johne Yowng*, in Mebestowne, is OFFICER to ovr COEVEN.

Elspet Chifsholme and *Iffobell More*, in Alderne, *Magie Brodie*,, and I, went in to *Alexander Cumings* litt-hows,¹⁶ in Alderne. I went in, in the likenes of a kea,¹⁷ the said *Elspet Chifolm* wes in the shape of a catt. *Iffobell Mor* wes a hair, and *Magie Brodie* a catt, and¹⁸ We took a threid of each cullor of yairne that wes in the said *Alexander Cuming* his litt-fatt,¹⁹ and did cast thrie knots on each threid, in *the Divellis* name; and did put the thriedis in the fatt, wither-fones²⁰ abowt in the fatt, in *the Divellis* name; and thairby took the heall strenth of the fatt away,

¹ Feet. ² Strong ale. ³ Male. ⁴ In the nook, or corner, of his plaid. ⁵ Pounded, or powdered it, like meal. ⁶ To make the plaster fine, and free from earthy particles. ⁷ Probably a sort of stir-about, or hasty-pudding, made of rye-flour. ⁸ In another Deposition it is thus expressed, 'lyk a pow or feadge.' A feadge was a sort of scone, or roll, of a pretty large size. Perhaps this term signifies, as large as the quantity of dough or paste necessary for making this kind of bread. ⁹ A flayed sucking pig, after being scalded and scraped. ¹⁰ Shrivelled with the heat. ¹¹ Red like a coal. ¹² Each alternate day. ¹³ Knew. ¹⁴ This is something new in Witch stories, and lets in additional light on these charms. ¹⁵ Each Coven appears to have had an OFFICER for the men, and a MAIDEN for the women; but whether the province of these personages was to preside over them, or to act as messengers, to call them together, does not seem so certain. ¹⁶ Dye-house. ¹⁷ Jackdaw. ¹⁸ This and the preceding spaces are left blank in the Deposition. ¹⁹ Dying-vat. ²⁰ Widdershins, contrary to the direction and ordinary course of the sun.

that it could litt nothing bot onlie blak, according to the culor of *the Divell*, in quhoes nam we took away the strenth of the rycht colouris that wes in the fatt!

ALL quhilkis of the premisses, fwa spokin and willinglie Confest and declairit furth of the mowth of the said *Iffobell*, in all and be all thingis as is abow fett downe, I, the said *Johne Innes*, Notar Publict, haw writtine thir presenttis; and with the saidis Witneffes abow namet, in farder testimonie and witnessing of the premisses to be of weritie, We haw subscrywit the famen with our handis, day, yeir, and place aboue specifeit.

JOANNES INNES, Notarius Publicus.¹

MR HARY FORBES, Minister at Auld Earn, Attestis.

W. DOLLAS of Cantray, Shereff-deput, Attestis.

A. BRODIE, witnes to the said Confetione.

HEN. ROSE, Minister at Nairne, Attestis the forsaid

HEW HAY of Newtown, Attestes.

Declaratione, as to the principal substantialis.

W. SUTHERLAND of Kinsterie, Attestis these Confessionis.

GEORGE PHINNIE, in Kirkmichael, Attestis.

Jo. WEIR, in Alderne, Attestis.

(2.) ISSOBELL GOWDIES SECOND CONFESSION.

ATT AULDERNE, the third day of May, 1662 yeiris, abowt the howris of two or thrie in the efternoone, or therby: IN prefence of MASTER HARIE FORBES, &c.²

THE quhilk day, in prefence of me, *Johne Innes*, Notar Publict, and Witneffes, all vnder-subscrywand, the said ISSOBELL GOWDIE, professing repentance, &c.³ Efter that tym ther vold meit bot somtymes a COVEN, somtymes mor, somtymes les; bot a Grand Meitting vold be about the end of ilk Quarter. Ther is threttein perfonen⁴ in ilk Coeven; and ilk on of vs has an SPRIT to wait wpon ws, quhan ve pleas to call wpon him. I remember not all the Spritis names; bot thair is on called 'SWEIN,' quhilk waitis wpon the said Margret Wilfon in Alderne; he is still⁵ clothed in grafs-grein; and the said Margret Wilfon hes an niknam called, 'PIKLE NEIREST THE WIND.' The nixt Sprit is called 'RORIE,' who waitis wpon Bessie Wilfone, in Alderne; he is still clothed in yallow; and hir nikname is 'THROW THE CORNE YAIRD,' [.].⁶ The third Sprit is called 'THE RORING LYON,' who waitis wpon Iffobell Nicoll, in Lochlow; and [he is still clothed] in sea-grein; her niknam is 'BESSIE RULE.' The fowrth Sprit is called 'MAK HECTOR,' qwho [waitis wpon Jean] Martein, dawghter to the said Marget Wilfon; he is a yowng-lyk Devill, clothed still in grafs-[green. Jean Martein is] MAIDEN to the Coven that I am of; and hir nikname is 'OVER THE DYKE WITH IT,' becaws THE DIVILL [alwayis takis the] Maiden in his hand nix him, quhan ve daunce Gillatrypes;⁷ and quhan he vold lowp from he and she will say, 'Ower the dyk with it!' The nam of the fyft Sprit is 'ROBERT THE [RULE,' and he is still clothed in] fadd-dun, and seimis to be a Comander of the rest of the Spritis; and he waittis wpon Margret Brodie, in Alderne. [The name of the faxt Spirit] is called 'THEIFF OF HELL WAIT WPON HIR SELFE;' and he waitis also on the said Bessie Wilfon. The name of the sevinth [Sprit is called] 'THE READ REIVER;' and he is my owin Spirit, that waittis on my selfe, and is still clothed in blak. The aucht Spirit [is called] 'ROBERT THE JACKIS,' still clothed in dune, and seimes to be aiged. He is ane glaiked gowked Spirit! The woman's [nikname] that he waitis on, is 'ABLE AND STOWT!'⁸ The nynth Spirit is called 'LAING;' and the woman's nikname that he waitis wpon is 'BESSIE BAULD.'⁹ The tenth Spirit is named 'THOMAS A FEARIE,' &c.¹⁰—Ther wilbe many vther Divellis, waiting wpon [our] MAISTER DIVELL; bot he is bigger and mor awfull than the rest of the Divellis, and they all reverence him. I will ken them all, on by on, from vtheris, quhan they appeir lyk a man.

¹ His Latin *docquet*, with his motto, '*Amor meus cruci fixus*. 1661,' are affixed. It is unnecessary to preserve this, as it is in common form. ² As in preceding Deposition. ³ The same preamble is repeated, with the account of her baptism and carnal dealing, &c., in similar terms as in her preceding Confession. ⁴ The DEIL's dozen. ⁵ Ever; always. ⁶ This paper is unluckily very much mutilated at the ends of the lines; which mutilation commences here. Where the sense can be made out, the words are conjecturally supplied, within brackets; if not, a small blank is left in this transcript. ⁷ Probably a dance then popular among the vulgar. ⁸ Viz. Bessie Hay. ⁹ Viz. Elspet Nishie. ¹⁰ Issobell, as usual, appears to have been stopped short here by her interrogators, when she touched on such matters.

Quhen we reafe the wind, we tak a rag of cloth, and weitts¹ it in water; and we tak a beetle² and knokis the rage³ on a stane, and we fay thryfe ower,

‘ I KNOK this ragg wpon this stane,
To raife the wind, in THE DIVELLIS name;
It fall not lye⁴ vntill I please againe!’

[Whan] we wold lay the wind, we dry the ragg, and fay (thryfe ower,)

‘ WE lay the wind in THE DIVELLIS name,
[It fall not] ryfe quhill we (or I) lyk to reafe it again!’

And if the wind will not lye instantlie [after we fay this,] we call wpon ovr Spirit, and fay to him,

‘ THIEFFE! THIEFFE! conjure the wind, and caws it to [lye].’

We haw no power of rain, bot ve will reafe the wind quhan ve pleas.—He maid vs believ [.] that ther wes no GOD besyd him.

As for Elf-arrow-heidis, THE DIVELL shapen them with his awin hand, [and fyne deliueris thame] to Elf-boyes, who whyttis and dightis⁵ them with a sharp thing lyk a paking neidle; bot [quhan I wes in Elf-land?] I saw them whytting and dighting them. Quhan I wes in the Elfes howffis, they will haw werie them whytting and dighting; and THE DIVELL giwes them to ws, each of ws so many, quhen Thes that dightis thaim ar litle ones, hollow, and bofs-baked!⁶ They speak gowftie⁷ lyk. Quhen THE DIVELL giwes them to ws, he faves,

‘ SHOOT thes in my name,
And they fall not goe heall hame!’

And quhan ve shoot these arrowes (we fay)—

‘ I SHOOT yon⁸ man in THE DIVELLIS name,
He fall nott win heall hame!
And this falbe alswa trw;
Thair fall not be an bitt of him on lieiw!’⁹

We haw no bow to fhoot with, but spang¹⁰ them from of the naillis of our thowmbes. Som tymes we will misse; bot if thay twitch,¹¹ be it beaft, or man, or woman, it will kill, tho’ they haid an jack¹² wpon them. Qwhen we goe in the shape of an haire, we fay thryfe ovr:

‘ I SALL goe intill ane haire,
With forrow, and fych, and meikle caire;
And I fall goe in THE DIVELLIS nam,
Ay whill I com hom [againe!].’

And instantlie we start in an hair. And when we wold be owt of that shape, we vill fay:

‘ HAIRE, [haire, God fend thé caire!]
I am in an hairis liknes just now,
Bot I falbe in a womanis liknes ewin [now.]’

When we vould goe in the liknes of an cat, we fay thryfe ower,

‘ I SALL goe [in till ane catt,]
[With forrow, and fych, and a blak]shot!
And I fall goe in THE DIVELLIS nam,
Ay quhill I com hom again!’

¹ Wet. ² A piece of flatted wood, somewhat resembling a cricket-bat, which washerwomen use for knocking clothes, in cleansing them. ³ Rag. ⁴ Be allayed. ⁵ Shapes and trims them as a carpenter, with edged-tools. ⁶ Boss also signifies hollow, or empty. Perhaps this expresses that these Elves were diminutive and *hump-backed* creatures resembling the *trows* or *trolls* of FAIRY SUPERSTITION; whose propensities are uniformly described as being malignant, and hostile to mankind. ⁷ Roughly; crossly; gruffly. ⁸ Yonder. The preceding and following rhymes are probably *unique*, even in the history of TRIALS for WITCHCRAFT, and show, in a very forcible manner, the criminality of the bigoted, though learned and well-intentioned, individuals who dragged forward such wretches to public trial and an ignominious death. ⁹ On life; *alive*. ¹⁰ Jerk. ¹¹ Touch. ¹² A coat of mail; defensive armour.

And if ve [wold goe in ane craw, then] we say thryfe ower :

‘ I SALL goe intill a craw,
With forrow, and fych, and a blak [thraw !
And I fall goe in the Divellis nam,]
Ay quhill I com home again !’

And quhen ve vould be owt of thes shapes, we say :

‘ CATT, catt, (or craw, craw,) [God] fend thé a blak fhott ! (or blak thraw !)
I wes a catt (or craw) juft now,
Bot I falbe [in a woman’s liknes evin now.]

Catt, catt, (or craw, craw,) God fend the a blak shot ! (or a blak thraw !)

Giff we, in the [shape of an catt, an craw, an] haire, or ony vther liknes, &c., go to any of our neightbouris howffis, being Witches, we will [say,]

[‘ I (or we) CONJURE] thé Goe with ws (or me) !’

And presentlie they becom as we ar, either cats, hearis, crowes, &c., and goe [with ws whither we wold. Quhan] we wold ryd,¹ we tak windle-ftrawes, or been-ftakes,² and put them betwixt owr foot,³ and say thryfe,

‘ [HORSE] and hattok, horfe and goe,
Horfe and pellattis, ho ! ho !’⁴

And immediatlie we flie away whair [euir we wold] ; and leaft our husbandis fould misf vs owt of owr beddis, we put in a boofom, or a thrie [leggit stoole befyde thame,] and say thryfe ower,

‘ I LAY down this boofom (or stooll,) In THE DIVELLIS name,
Let it not fteir [Quhill I] com again !’

And immediatlie it feimis a voman, befyd owr husbandis.

Ve can not turn in the lik[n⁵es of] Quhen my husband fold beeff, I vfed to put a fwellowes feather in the hyd of the beaft, and [say thryfe,]

‘ [I] PUTT owt this beeff in THE DIVELLIS nam,
That meikle filver and good pryce com hame !’

I did ewin fo [qubeneuir I putt] furth either horfe, noat,⁶ vebs,⁷ or any vther thing to be fold, and ftill⁸ put in this feather, and faid the [famin wordis thryfe] ower, to caws the comodities fell weill, &c. thryfe ower,

OWR Lord to hunting he [is gone]

. marble ftone,

He fent vord to Saint Knitt⁹

[Quhan we vould heall ony for, or brokin limb, we say thryfe ower,]

.
.

He pat the blood to the blood, Till all vp ftood ;

The lith to the lith, Till all took with ;

Owr Ladie charmed hir deirlie Sone, With hir tooth and hir townge,

And hir ten fingeris—

In the name of THE FATHER, THE SON, and THE HALIE GAIST !¹⁰

¹ Ride. ² Bean-stalks. ³ For feet. ⁴ See Note to ‘ Horse and hattock,’ p. 604. ⁵ There is a tradition in MORAYSHIRE, that Witches could not appear in the shape of a dove or a lamb ; the one being emblematical of THE HOLY SPIRIT, the other being the emblem of the AGNUS DEI. Perhaps the *hiatus* might not improperly have been so supplied. ⁶ Nolt, cattle. ⁷ Webs of cloth. ⁸ Uniformly ; constantly ; always. ⁹ After this fragment, a considerable portion of the MS. is unfortunately torn off. It is probable that the two first lines of the next Charm are mutilated. ¹⁰ It has been often remarked by the Editor, in the course of the numerous WITCH TRIALS which occur in this Collection, that a great proportion of the charms, in use to be repeated by these unhappy women, were actually paraphrases of portions of the *Mass-Book*—and in some cases, such as in the Case of ANNIE SAMSON, there appears to have been used doggrel versions of THE CREED, &c. ! Others were taken from ancient popular rhymes and songs, such as the above fragment, ‘ Our Lord to hunting he is gone,’ &c., which, unfortunately, is mutilated.

And this we say thryse over, straiking¹ the for, and it becomes heall. 2^{di}, For the BEAN-SHAW,² or pain in the heance,³—‘WEE ar heir thrie *Maidens* charming for the bean-straw; þe man of the Middle-earth, blew beaver, land-feaver, maneris of ftooris, the Lord fleigged⁴ the Feind with his holy candles and yeird foot ston!—Thair she fittis, and heir she is gon!—Let hir nevir com heir again!’—3^{di}, For THE FEAPERIS, we say thrise over, ‘I FORBID the qwaking-feavers, the sea-feaveris, the land-feaveris, and all the feaveris that ewir God ordained, owt of the head, owt of the heart, owt of the bak, owt of the fydis, owt of the kneysis, owt of the thieghes, fra the pointis of the fingeris to the nebes⁵ of the toes; owt fall the feaveris goe, [som] to the hill, som to the hap, som to the ston, some to the stok. In Saint Peiteris nam, Saint Paullis nam, and all the Saintis of Hevin: In the nam of THE FATHER, THE SONE, and of THE HALIE GOST!’⁶—AND when we took the frwit of the fishes from [the] fisheris, we went to the shore, befor the boat wold com to it; and we wold say, on the shore-fyd, thrie feuerall tymes ower,

‘THE fisheris ar gon to the sea,
And they vill bring hom fishe to me;
They will bring them hom intill the boat,
Bot they fall get of thaim bot the smaller fort!’

So we either steall a fish, or buy a fish, or get a fish from them [for nowght,] an or ma.⁷ And with that we haw all the fruit of the heall⁸ fishes in the boat; and the fishes that the fishermen tham selues will haw, will be bot froath, &c.

The first woyag that ewer I went with the rest of ovr COVENS wes [to] Plewghlandis; and thair we shot an man betuixt the plewgh-ftiltis, and he presentlie fell to the ground, wpon his neife⁹ and his mowth; and than THE DIVELL gaw me an arrow, and cawfed me shoot an voman in that feildis; quhilk I did, and she fell down dead.¹⁰ In Winter 1660, quhen Mr Harie Forbes, Minister at Aulderne, wes feik, we maid an bagg of the gallis, flesh, and guttis of toadis, pickles of bear,¹¹ pairingis of the naillis of fingeris and toes, the liewer of ane hair, and bittis of clowtis. We steipit this all together, all night among watter, all haked¹² throw vther. And whan we did put it among the water, SATAN wes with ws, and learned ws the wordis following, to say thryse ower. They ar thus,

‘HE is lying in his bed,—he is lyeing feik and fair;
Let him lye intill his bed two monethis and [thrie] dayes mair!
2^{di}, Let him lye intill his bed,—let him lye intill it feik and fore;
Let him lyne untill his bed monthis two [and] thrie dayes mor!
3^{di}, He fall lye intill his bed, he fall lye in it feik and fore;
He fall lye intill his bed [two monethis and] thrie dayes mor!’

Quhan we haid learned all thes wordis from THE DIVELL, as said is, we fell all down [wpon ovr] kneis, with ovr hear down ower ovr shoulderis and eyes, and ovr handis lifted wp, and ovr eyes

¹ Stroking; gently rubbing. ² The *boneshave* or *boneshaw*, signifies the SCIATICA. From an amusing, published specimen of THE EXMOOR DIALECT, Devonshire, it appears, that the term is also known in England. The peasantry of that district use a singular *Charm* for its cure. ‘The patient must lie upon his back, on the bank of the river or brook of water, with a straight staff by his side, between him and the water; and must have the following words repeated over him, viz.

“Boneshave right—Boneshave straight—
As the water runs by the stave—Good for Boneshave!”

They are not to be persuaded but that this ridiculous form of words seldom fails to give them a perfect cure.’ *Exmoor Scolding*. P. 8. Note. ³ Haunch. ⁴ Affrighted; terrified. ⁵ Nibs; extremities. ⁶ It appears very singular to us who live in the Nineteenth Century, that SATAN should have taught his servants to invoke THE SAINTS, and even THE HOLY TRINITY. The charms recited by his disciples are usually fragments of ancient Monkish rhymes; and most of them were such as many good Roman Catholics of the lower orders, even in these times, would not scruple to use, for the supposed cure of their bodily ailments. ⁷ One or more. ⁸ Whole. ⁹ Nose.

¹⁰ Issobell previously explained, that these poaching excursions took place, when the Witches were careering in mid-air, mounted on windle-straws and bean-stalks, &c. The DEVIL usually made them pick up such of the Elf-arrows as fell short of or missed their mark. ¹¹ Grains of barley, or bear. ¹² Hacked; minced into small pieces.

[stedfastlie fixed wpon] THE DIVELL; and said the forfaidis wordis thryfe ower to THE DIVELL, striktlie, against Maister Harie Forbes [his recowering from the said seiknes.] In the night tym we cam in to Mr Harie Forbes chalmer, quhair he lay, with owr handis all smeared [. out] of the bagg to swing it wpon Mr Harie, quhair he wes seik in his bed; and in the day tyme [. ane of owr] nwmbur, quho wes most familiar and intimat with him, to wring or swing the bagg [wpon the said Mr Harie, as we could] not prevaill in the night tym against him; quhilk wes accordinglie done. Any of [.] comes in to your howffes, or ar set to doo yow evill, they will look vncowth lyk, thrawn [.] hurlie lyk, and thair clothes standing owt. The Maiden of owr Coven, Jean Mairten, wes [. We] doe no great mater without owr Maiden.

And if a child be forspoken,¹ we tak the cradle [.] throw it thryfe,² and than a dowg³ throw it; and then shakis the belt abow the fyre [. and then cast it] downe on the ground, till a dowg or catt goe ower it, that the seiknes may com [. wpon the dowg or] catt.

ALL quhilkis wer swa spokin furth of the mouth of the said ISSOBELL GOWDIE, &c.⁴

[Indorfed] ED^r, 10 July, 1662. Confidered and found relevant be THE JUSTICE DEPUTE.

'Tak cair of this peaper. See the Justice deputis judgement of it. Show this to the Commiffioneris.'

HAVEING read and confidered THE CONFESSIONS of ISOBEL GOWDIE, within contened, as particularlie SATHAN, Renunciation of Baptism, with diverse malefices, I find that a Commiffion may be verie justlie pafs, for hir last Tryall. (Sic subscribiter) A. COLVILLE, (Justice-depute.)

(3.) ISSOBELL GOWDIES THIRD CONFESSION.

AT AULDERNE, the fyftein day of May, 1662 yeiris, IN prefence of Maister HARIE FORBES, Minister of the Gospell at Alderne, Mr HEW ROSSE, Minister at Nairn; JOHNE INNES of Edingeith; HEW HAY of Newtown; Mr ALEX DUNBAR, Schoolmaster and Session Clerk of Alderne; GEORGE PHINNEY, in Kirkmichaell; and Johne Weir, and Androw Easie in Alderne; and many vtheris, WITNESSIS to THE CONFESSION efter sett down, spoken furth of the mouth of ISSOBELL GOWDIE, spous to Johne Gilbert in Lochloy.

THE quhilk day, in prefence of me, JOHNE INNES, Notar Publict, and Witneffes all vnder subscriwand, the said ISSOBELL GOWDIE, appeiring to be most penitent for hir abominable finnes of Witchcraft, most ingenwollie procedit in hir CONFESSION therof, in maner efter following; to witt. First, as I wes goeing betwixt the townis of *Drumdewin* and *the Headis*, THE DIVELL met with me, and thair I covenanted with him, and promiseit to meit him, in the night tym, in *the Kirk of Alderne*; quhilk I did. He flood in the Readeris dask, and an blak book in his hand; quhair I cam befor him, and renuncet JESUS CHRIST and my baptisme; and all betuixt the soale of my foot and the croun of my head, I gaw frielie wp and ower to THE DIVELL. *Margaret Brodie*, in Alderne, held me wp to THE DIVELL, wntill he re-baptised me, and marked me in the shoulder, and with his mouth sucked out my blood at that place, and spowted it in his hand, and sprinkling it wpon my head and face, he said, 'I baptise ye, JANET, to my selff, in my own nam!' Within a whyll thereafter we all removed. And within few dayes he cam to me, in *the New Wardis of Inshoch*, and ther haid carnall cowpulation with me. He wes a werie meikle blak roch man. He will lye als hewie wpon ws, quhan he hes carnall dealling with ws, lyk an malt-secke. His memberis ar exceiding great and long; no mans memberis ar so long and bigg as they ar. He wold be amongst ws lyk a weath horse amongst mears. He wold lye with ws in prefence of all the multitud; neither haid we nor he any kynd of shame; bot

¹ Bewitched.

² This seems to allude to passing the child, &c., through an enchanted hoop, ring, or belt, a very common popular charm in those days.

³ Dog.

⁴ The same form and subscriptions as in the preceding Confession, with the Notarial Attestation, &c. of JOHN INNES.

especiallie *he* hes no shame with him at all. He wold lye and hawe carnall dealling with all, at euerie tym, as he pleased. He wold haw carnall dealling with ws in the shap of a deir or any vther shap that he wold be in. We wold never refuse him. He wold com to my hows-top in the shap of a crow, or lyk a deir, or in any vther shap, now and then. I wold ken his voice, at the first heiring of it, and wold goe furth to him and haw carnall cowpulation with him. The youngest and lwftiest women will haw werie great pleasour in their carnall cowpulation with him, yea much mor than with their awin husbandis; and they will haw a exceiding great desir of it with him, als much as he can haw to them, and mor; and never think shame of it. He is abler for ws that way than any man can be (Alace! that I fould compair him to ane man!) onlie he ves heavie lyk a malt-feck; a hudg nature, verie cold, as yce.

He wold fend me now and then to *Aulderne* som earandis to my neightbouris, in the shap of ane hair. I wes on morning, abowt the break of day, going to *Aulderne* in the shap of ane hair, and *Patrik Papleyis* ferwandis, in *Kilhill*, being goeing to ther labouring, his houndis being with them, ran efter me, being in the shap of ane haire. I ran werie long, bot wes forcet, being wearie, at last to take my own hous. The dore being left open, I ran in behind an chift, and the houndis followed in; bot they went to the vther fyd of the chift; and I was forcet to run furth agane, and wan into an vther hows, and thair took leafour to fay,

‘HAIR, hair, God fend thé cair!
I am in a hearis liknes now,
Bot I fall be an voman ewin now!
Hair, hair, God fend thé cair!’

And so I returned to my owin shap, as I am at this instant, again. The dowgis will som tymes get som byttis¹ of vs, quhan ve ar in hairis,² bot will not get ws killed. Quhan ve turn owt of a hairis liknes to owr awin shap, we will haw the byttis, and rywis, and scrattis³ in owr bodies. Quhan we vold be in the shap of cattis, we did nothing but cry and wraw,⁴ and rywing, and as it ver, wirrieing on an vther; and quhan ve com to owr awin shapes again, ve will find the scrattis and rywes on our skins, werie for. Quhan on of vs or mor ar in the shap of catis, and meitt with ony vtheris owr neightbouris, we will fay,

‘DIVELL SPEID THÉ—GOE THOW WITH ME!’

And immediatlie they will turne in the shap of an catt, and goe with ws. Quhen we wilbe in the shap of crowes, we will be larger than ordinar crowes, and will sitt wpon brenches of treis. We went in the shap of rewkis⁵ to *Mr Robert Donaldsones* hows, *THE DIVELL*, and *Johne Taylor*, and his wyff, went in at the kitchen chimney, and went down wpon the crowk.⁶ It wes about *Lambes*,⁷ in anno 1659; they opened an vindow, and (we) went all in to the hows, and gott beiffe and drink thair; bot did no more harme.—We went in to *the Downie-hillis*; the hill opened, and we cam to an fair and lairge braw rowme, in the day tym. Thair ar great bullis rowtting and skoylling ther, at the entrie, quhilk feared me.⁸

Bot that quhich troubles my conscience most, is the killing of severall perfones, with the arrowes quhich I gott from *THE DIVELL*. The first woman that I killed wes at *the Pleugh-landis*; also I killed an⁹ in the East of *Murrey*, at *Candlmas*¹⁰ last. At that tyme *Bessie Wilson*, in *Alderne*, killed on thair; and *Margaret Wilson*, ther, killed an vther; I killed also *James Dick* in *Canniecavill*: Bot the death that I am most of all forrie for, is the killing of *William Bower*, in *the Miltowne of Moynes*; *Margaret Brodie* killed an voman, washing, at *the Burne of Tarres*; *Bessie Wilson* killed an man at *the Bushe of Strutheris*; *Bessie Hay* in *Aulderne* killed an prettie man called *Dunbar*, at the Eist

¹ Bites.

² In the shape of hares.

³ Tears and scratches.

⁴ *Caterwaul*, like cats.

⁵ Rooks.

⁶ The *crook*, on which the ‘kail-pot’ hangs, over the fire.

⁷ *Lammas*, the 1st day of August.

⁸ Alarmed,

frightened me. See her *CONFESSION*, Apr. 13, 1662, page 604.

⁹ Ane; one.

¹⁰ The purification of the

blessed Virgin Mary, Feb. 2d.

end of *the Towne of Forres*, as he wes coming owt at an gaitt; *Margaret Brodie* in *Aulderne* killed on *David Blak*, in *Darnvay*. *Janet Breadhead*, spows to *Johne Taylor*, told me, a litle befor she wes apprehendit, that *Margaret Wilfone* in *Aulderne* shot *Alexander Hucheon*, in *Aulderne*; *Janet Breadheid* shot *Johne Falconer*, in the *Park*. The most of ws all wer ther, at that tyme. *Bessie Wilfone* killed on *William Man*, at *Burgie*; *Margaret Wilfone* killed on *Johne Lee*, and *Janet Breadheid* killed a suyn¹ at *Burgie*; *Bessie Wilfone* in *Aulderne*, on an first Monday of the Reath, took a bagg maid of hairis lieweris,² the flesh, guttis and gallis of toadis, naillis of fingeris and toes, and fwinged it on an young man called *Thomas Reid*, and he died. *Bessie* and *Margaret Wilfones* in *Aulderne*, *Johne Taylor* and his wyff, *Margrat Brodie* and I, and THE DIVELL, wer together, and *Mr Harie Forbes*, Minister at *Aulderne*, goeing to *Moynes*. THE DIVELL gaw *Margret Brodie* an arrow to shoot at him, quhilk she did; bot it cam short; and *the Divell* cawfed tak it wp again. We defiret to shoot again, bot *the Divell* said, 'No; we wold not gett his lyff at that tyme!' *The Divell* cawfed me to shoot at *the Laird of Park*,³ as he was croceing *the Burne of the Boath*; bot I missed him.

We wold goe to feuerall howffis, in the night tym. We wer at *Candlmas* last in *Graingehill*,⁴ quhair we got meat and drink anewgh. THE DIVELL sat at the heid of the table, and all the COVEN abowt. That night he defirit *Alexander Elder*, in *Earlseat*, to say the grace befor meat, quhilk he did; and is thus:

'WE eat this meat in THE DIVELLIS nam,
With sorrow, and fych,⁵ and meikle shame;
We fall destroy hows and hald;
Both sheip and noat in till the fald.
Litle good fall come to the fore
Of all the rest of the litle store!'

And than ve began to eatt. And quhan ve haid endit eatting, we looked steadfastlie to THE DIVELL, and bowing owrselwes to him, we said to *the Divell*,

'We thank thé ovr Lord for this!' &c.

The wordis which we spak, quhan we maid the pictur, for distroyeing of *the Laird of Parkis* meall-children, wer thus:

'IN THE DIVELLIS nam, we powr in this water among this mowld (meall,)⁷
For lang duyning and ill heall;
We putt it into the fyre,
That it may be brunt both stik and stowre.
It falbe brunt, with ovr will,
As any stikle⁸ wpon a kill.'

THE DIVELL taught ws the wordis; and quhan ve haid learned them, we all fell downe wpon ovr bare kneis, and ovr hair abowt ovr eyes, and ovr handis lifted wp, looking steadfast wpon THE DIVELL, still saying the wordis thryse ower, till it wes maid. And then, in THE DIVELLIS nam, we did put it in, in the midst of the fyre. Efter it had skrukned⁹ a litle befor the fyre, and quhan it ves read lyk a coale, we took it owt in THE DIVELLIS nam. Till it be broken, it will be the deathe of all the meall children that *the Laird of Park* will ewer get. Cast it ower an Kirk, it will not brak quhill¹⁰ it be broken with an aix, or som such lyk thing, be a man's handis. If it be not broken, it will last an hundreth yeir. It hes ane cradle about it of clay, to preferue it from skaith;¹¹ and it wes roften each vther day, at the fyr; som tymes on pairt of it, som tymes an vther pairt of it; it vould be a litle wat with water, and then roften. The bairn vould be brunt and roften, ewin as it ves by ws. It vanted

¹ Sow. ² Hares' livers. ³ John Hay of Park. ⁴ Belonged to Brodie of Lethin. ⁵ Sighing; lamentation. ⁶ The rest was probably omitted in writing down the Confession, as being blasphemous. ⁷ It is writtin *meall* in the other Confession; and the metre (such as it is) requires this liberty. *Mowld* signifies 'earth' or 'dust.' ⁸ Stubble. ⁹ Parched; shrivelled. ¹⁰ Until. ¹¹ Harm; injury.

no mark of all the pairtis of an child, little lippis, &c., and the handis of it folded downe by its sydis. *Johne Taylor* and *Janet Breadheid* his wyff, *Bessie* and *Margret Wilsones* in *Aulderne*, and I my felfe, with *THE DIVELL*, wer onlie at the making of it; bot all the multitud of all owr *COEVENS* got notice of it, at the nixt meitting; for all owr actis and deidis, betuixt grett Meittingis, most be geven accompt of, and notted¹ in his book at each Grand Meitting—bot all my owin *COVEN* gott notice of it werie schortlie. *THE DIVELL* him felf cam to me, to my awin hows, and bad me meitt him in *Johne Tayloris* hows, to help thaim to mak the said pictur. All *THE COVEN* did flie lyk cattis, keas, hairis, and rewkis, &c. bot *Barbara Ronald*, in *Brightmanney*, and I, still² read on an horfe, quhich ve vold mak of a straw or beein-stalk.³ *Bessie Wilson* was still in the liknes of a rewk.

Quhan we ar at meat, or in any vther place quhateuir, the *Maiden* of each *COVEN* fittis abow the rest, nixt *THE DIVELL*; and she ferwis *THE DEVILL*, for all the old peopill that he cairis not for, and ar veak and wnmeit for him. He will be with hir and ws all lyk a weath-horfe efter mearis; and somtymes a man, bot werie wilfull⁴ in carnall cowpulation at all tymes; and they ewin so als wilfull and defiwows of him. Som tymis, among owr felwis, we wold be calling him 'BLAK JOHNE,' or the lyk, and he wold ken it, and heir ws weill aneughe; and he ewin then com to ws, and fay, 'I ken weill anewgh what 3e wer fayeing of me!' And then he vold beat and buffet ws werie for. We wold be beattin if ve wer absent any tyme, or neglect any thing that wold be appointit to be done. *Allex^r Elder*, in *Earlseat*, vold be werie oft beattin. He is bot soft,⁵ and cowld never defend him felf in the leift, bot greitt and cry, quhan he vold be scourging him. Bot *Margret Wilson*, in *Aulderne*, wold defend hir felf fynlie, and cast wp hir handis to keip⁶ the stroakis off from hir; and *Bessie Wilson* wuld speak cruftie with hir towng, and wold be belling again to him stowtlie. He wold be beating and scourging ws all wp and downe with cardis⁷ and vther sharp scourges, like naked gwhastis; and we wold be still cryeing, 'Pittie! pittie! Mercie! mercie, owr Lord!' Bot he wold haw neither pittie nor mercie. Whan he vold be angrie at ws, he wold girne at ws lyk a dowge, as iff he wold fwallow ws wp. Somtym he vold be lyk a stirk, a bull, a deir, a rae, or a dowg, &c., and haw dealling with ws; and he vold hold wp his taill wntill we wold kisse his arce. And at each tyme, quhan ve wold meitt with him, we behoowit to ryse and mak our curtesie; and we wold fay, '3e ar welcom owr Lord!'—and 'How doe 3e, my Lord!' &c. Quhan we wold tak the furit⁸ (fruit?) away of anie perfones midden or dunghill, we wold fay thus, (when we wold putt baiked flesh of an vnchristned child, dowgis and sheipis flesh, and pairingis of naillis, &c., all haked throw-vther):—

' We putt this intill this ham,⁹
In our Lord *THE DIVELLIS* nam.
The first handis that handles thé,
Brunt and scalded fall they be!
We fall distroy hows and hald,
With the sheip and nout¹⁰ intil the fald,
And litle fal come to the fore
Of all the rest of the litle-store!¹¹

We killed an ox, in *Burgie*, about the dawing of the day, and we browght the ox with ws hom to *Aulderne*, and did eat all amongst ws, in an hows of *Aulderne*, and feasted on it.

THE DEVILL wold giw ws the brawest lyk money that ewer wes coyned; within fowr and twantie houris it vold be horfe-muke.¹² Alace! I deferw not to be fitting heir, for I haw done so manie evill

¹ Noted; recorded.

² Constantly; always; uniformly.

³ Bean-stalk.

⁴ Wanton.

⁵ Uncou-

rageous; simple; unresisting.

⁶ *Keip*; ward off.

⁷ Scourges made of *cords*—not 'cairds,' or instruments

used in *carding* wool, flax, &c.

⁸ The Editor never before met with this word; it evidently means strength,

spirit, 'fushion,' (Fr. *foison*); that is, the fertilizing power.

⁹ Hame; home; destination.

¹⁰ Nolt;

cattle.

¹¹ The last four lines are the same with the conclusion of the *WITCH-GRACE*, in this Confession, p. 612.

¹² Horse-dung. In other Witch cases, money thus procured is usually said to have been turned into 'sclaitt-stanis.'

deidis, especiallie killing of men, &c. I deferw to be reivin wpon iron harrowes, and worfe, if it culd be devyfit !

And quhan we tak away the fruit of cornis, at *Lambes*,¹ we tak an wooll-sheeir, and cuttis or clips onlie thrie stakis² of it, and plaitis vther thrie rudis togither, and sayes,

' WE cutt this corne in our Lord THE DIVELLIS nam,
And we fall haw the fruit of it ham !'

And this thryfe ower ; and so we haw the fruit of that field. Ewin so, quhan we tak keall or the lyk, &c. And we lay all vp till *Yewll, Pace*, or Halie dayes ; and pairtis it among vs, and feastis on that togither.

Wpon the quhilkis all and fundrie of the premisses, swa spokin and willinglie Confest be the said *Issobell Gowdie*, I, the said *Johne Innes*, Notar publict, haw wretten thir presentis, and with the Witneffes abow and vnder namet, haw subscryuit the samen with our handis, day, moneth, place, and yeir abow sett doun.

JOANNES INNES, Notarius Publicus.³

MR HARY FORBES, Minister of Auld Earn, Attestis.

HEN. ROSE, Minister at Nairne, Attestis the foirsaid Declaratioun, as to the principal substantialis.

HEW HAY of Newtoun, Attestes.

Jo. WEIR, in Auldearne, Attestis.

GEORGE PHINNIE, in Kirkmichael, Attestis.

(4.) ISSOBELL GOWDIE'S FOURTH CONFESSION.

AT AULDERNE, the tuantie sevint day of May, 1662 yeiris. In presence of MASTER HARRIE FORBES, Minister at Alderne ; PATRIK CAMPBELL of Boath ; MR ALEX^R DUMBAR, Schoolmaster and Clerk of the Session of Alderne ; GEORGE PHINNEY, in Kirkmichaell ; HEW HAY of Newtowne ; and JOHNE WEIR, in Alderne ; WITNESSES to THE CONFESSION of ISSOBELL GOWDIE, spows to Johne Gilbert, in Lochloy.

THE said day, the said ISSOBELL, professing repentance for hir former finnes of Witchcraft, and that she had bein ower long in THE DIVELLIS service ; without ony compulsitouris, proceidit in hir CONFESSION, in maner efter following : That is to say. I acknowledg, to my great grieff and sham, that fyftein yeiris since I denyed FATHER, SON, and HOLIE GOST, in the *Kirk of Alderne* ; and gaw over my bodie and fowll to THE DIVELL ; he standing in the Readeris Dask of *Aulderne*, and an blak book in his hand : *Margret Brodie*, in Alderne, held me wp to THE DIVELL, quhill⁴ I did this, and quhill he marked me one the shoulder, and fowked out my blood thairat, and spitted it in his hand, and sprinkled it on my head, and baptifed me ' JANET,' in his owin nam. Efter that, he had carnall cowpulation with me, in the *New Wardis of Inshoch* ; and still thairefter, fra tym to tym, at owr pleafour.

The names of THE COEVEN ar thes.⁵ *Bessie Wilfone*, in Alderne ; *Janet Burnet*, ther ; *Elspet Nishie*, ther ; *Margret Brodie*, ther ; *Margret Vilfone*, ther ; *Bessie Hay*, ther ; *Johne Taylor*, in Belmakeith ; *Janet Breadhead*, his spous ; *Barbara Ronald*, *Issobell Nicoll*, in Lochloy ; my self, with *Jean Mairten*, our MAIDEN ; and *Johne Young*, in Mebestoun, owr OFFICER. THE NAMES OF OUR DIVELLIS, that waited upon us, ar thes. First, ROBERT, the *Jakis* ; SANDERIS, the *Read Reaver* ; THOMAS, the *Fearie* ; SWEIN, the *roaring Lion* ; THIEFFE OF HELL, *Wait upon hir self* ; MAKHECTOUR ; ROBERT, the *Rule* ; HENDRIE LAING ; and RORIE. We wold ken them all, on by

¹ *Lammas*, 1st August ; *Festum S. Petri ad Vincula*. motto, before referred to, are annexed.

² Stalks ; stems.

³ The long Latin *docquet* and

⁴ Until.

⁵ The principal purpose of this renewed Examination seems to have been to get a more detailed account of the persons composing her COEVEN, &c., besides getting a solemn Confirmation of her former Declarations ; so that the rest of that unhappy Society might in due time be brought to Trial and punishment.

on, from vtheris. Som of thaim apeirit in fadd-dun, fom in grasse-grein, fom in sea-grein, and fom in yallow. THE NIK-NAMES that THE DIVELL gaw wnto ws wer, PIKELL NEIREST THE VIND, this wes *Margret Wilsones* niknam; *Bessie Wilsones* niknam ves THROW THE CORN-YAIRD; *Elspet Nishies* niknam ves BESSIE BALD; *Jean Mairtenis* niknam, quho ves MAIDEN, is OWER THE DYK WITH IT; *Bessie Hayes* nickname is ABLE AND STOUT.

I haw fein the Elf-arrowes maid. The *Divell* dights¹ them, and the *Elf-boy*es quhytes² them. We got ewerie on (of) ws so many of thaim from the *Divell*, to shoot at men.³ I my self killed on *William Bower*, at Miltoun of Moynes. This griewis me mor than any thing that I ewer did. *Margret Brody* killed an woman, washing, at the *Burn of Tarras*. *Bessie Wilson* killed an man, at the *Bush of Strutheris*. *Bessie Hay* killed on *Dunbar*, at the East end of the town of *Forres*, coming owt at a gait. *Margret Brodie* shot at on *David Blak*. *Margret Wilson* killed on *Alexr Hucheon*, in Aulderne. *Janet Breadhead*, now in prifon, killed *Johne Falconer*, in Park. Ther were thrie killed East the cowntrie, at *Candlmas* last: I killed on, *Margret Brodie* on, and *Bessie Wilson* on. I shot on *James Dik*, in Connicavell; *Margret Brodie* killed on *W^m Crukshank*; *Margret Wilson* killed on *Johne Ley*; *Janet Breadhead* killed a fuyn,⁴ also she killed an vther man at *Burgie*; and *Bessie Wilson* killed on thair, namet *W^m Man*. We killed an ox, and brought it to *Bessie Hayes* hows, in Aulderne; and we did eat him thair. I shot at the *Laird of Park*, as he ves crossing the Burn⁵ of Boath; bot, thankis to God now, that he preferwit him. *Bessie Hay* gaw me a great cuffe,⁶ becaus I missed him.

Margaret Brodie shot at *Mr Harie Forbes*, at the Standing-ftanes, bot she missed; and speirit, 'If she fould shoot again?' And the *DIVELL* said 'Not!—For we wold nocht get his lyf at that tym.' We intentit⁷ feuerall tymes for him, quhan he ves feik. *Bessie Hay*, *Jean Mairten*, the Maiden, *Bessie Wilson*, *Margret Brodie*, *Elspet Nishie*, spows to *Johne Mathow*, and I myself met in *Bessie Wilsones* hows, and maid an bag against him. The bag wes maid of the flesh, guttis, and gallis of toadis, the liever of a hear,⁸ pikles of corn, and pairingis of naillis of fingeris and toes; we steipit all night among water. The *Devell* learned ws to say thes wordis following, at the making of the bag:—

'HE is lying in his bed—and he is feik and fair,
Let him ly in till that bedd monthes two and dayes thrie mair!
He sal ly in till his bed, he sal be feik and fair—
He fall lye in till his bedd monethes two and dayes thrie mair!'

And quhan we haid said thes wordis, we wer all on our kneis, our hair abowt ovr showlderis and eyes, holding wp our handis to THE *DIVELL*, that it⁹ might destroy the said *Mr Harie*. It ves intentit that ve, coming in to his chalmer, in the night tym, we fould swing it on him. And becaus we prevailed not at that tym, *Bessie Hay* vndertook and cam in to his chalmer to wifit him, being werie intimat with him; and she brought in of the bag in hir handis, full of the oyll thairof, to haw swowng and casten dropis of it on him; bot ther wer som vther worthie persons with him at that tym, by quhich God prevented *Bessie Hay*, that she got no harm don to him, bot swang a litl of it on the clothes of the bed quhair he lay.

Johne Taylor and his wyff, *Bessie* and *Margret Wilsones*, and I, maid a pictur for the *Laird of Parkis* maill children.¹⁰ *Johne Taylor* brought hom the clay in his plaid newk; his wyff sifted it; we powred in vater in a cowg¹¹ amongst it, and wrought it for,¹² and maid a pictor of it, lyk a child, als big as a pow. It wanted no mark of the imag of a bairn, eyes, nose, mouth, litle lippies, and the hands of it folded down by its fydis. The vordis that we said, quhan we maid it, ver thes:—

¹ Dresses. ² Blocks them out. ³ See the CONFESSION of Apr. 13, 1662, where Issobell tells us they were licensed to sport, in this manner, when riding on straws through the air; and that they had power to kill all who did not sanctify themselves, &c. ⁴ A sow. ⁵ On good authority, Issobell and her master ought to have known, that the Laird was out of their power while crossing a running stream. ⁶ A smart slap, or blow. ⁷ Tried; essayed. ⁸ A hare's liver. ⁹ Viz. Their charmed bag. ¹⁰ See the former CONFESSIONS. ¹¹ A sort of wooden dish. ¹² Sore; extremely.

' WE put this water among this meall,
For long dwyning¹ and ill heall;
We put it in intill the fyr,
To burn them vp both stik and flour,
That be brunt with our will,
As any stikill² on an kill !'

THE DIVELL fitton on an blak kift. Ve wer al on our kneysis, and owr hair about our eyes, looking on THE DIVELL stedfastlie, and owr handis lifted vp to him, saying the vordes ower. And by this the bairnis died, &c. All this, with a great many mor terrible thingis, the saidis Witneffes and Notar hard the said *Iffobell* CONFES, and most willinglie and penetently speak furth of hir ovin mouth. IN witnes quhairof, WE haw subscryuit thir presenttis, with owr handis, day, yeir, and place, abow sett down.

ITA EST Joannes Innes, Notarius Publicus, in fidem premissorum, rogatus et requisitus, subscribo.

JOANNES INNES, No^{rius} Publicus.

MR HARY FORBES, Minister of the Gospel, at Old Earn, Attests.

W. SUTHERLAND of Kinsterrie, Attestis.

HEW HAY of Newtounne, Attestes.

ALL. DUNBAR, Schoolmaster and Clerk to the Session of Oldearne, Attests.

GEORGE PHINNIE, in Kirkmichel, Attests.

JO. WEIR, in Auldearne, Atteasts.

VIII. CONFESSION of Janet Breadheid, spouse of John Taylor, in Belmakeith.

AT INSHOCH, the fowrteinth day of Aprill, 1662 yeiris. IN prefence of PATRIK DUNBAR of Benaferrie,³ Shereff principall of the Shereffdome of Elgin and Forres; HEW HAY of Newtounne; ARCHBALD DUNBAR, in Meikle Penick; ARCHBALD DUNBAR, in Lochloy; WALTER CHALMER, in Balnaferrie; JAMES COWPER, in Inshoche; JOHNE WEIR, in Aulderne; and ane great multitud of all fortis of vther perfones; WITNESSES to THE CONFESSIONS and DECLARATIOUN efter sett downe, spokin furth of the mowthe of JANET BREADHEID, spous to Johne Taylor, in Belmakeith.

THE quhilk day, in prefence of me, JOHNNE INNES, Notar Publict, and Witneffes abownamet, vnderfubscryuand, ⁴[the said] JANET BREADHEID, professing repentance for hir former finnes of Witchcraft, and that she haid bein over long in the [famin] service; without any preffuris,⁵ proceedit as followis, to witt. FIRST, I knew nothing of Witchcraft wntill I wes mari[et with] my husband, Johne Taylor; andsit wes he, and Elspet Nishie, his mother, that entyfed me to that craft. And the first [thing] that we did wes, we maid some drowgries,⁶ of dowgs flesh and sheipis flesh, against Johne Hay, in the Mure; and therby took away his cornes, and killed his horse, noat,⁷ sheip, and vther guidis;⁸ and layed it abowt his hows, to tak away his awin lyffe; and thereafter, he shortlie died. Onlie my mother-in-law and my husband did this, to learne me; and this wes my first [lessen] from them, &c.⁹ When they gott me to consent to this craft; first, they haid me to the Kirk of Nairne, in the nycht [tyme;] and THE DIVELL wes in the Readeris dask, and an book in his hand. And at that meitting, Bessie Wilfone, in Auld[erne;] Margret Wilfone, spows to Donald Callam, thair; Margret Brodie, thair; Barbara Friece, ther; Helen Inglis, spows to William [. . . .] thair; Janet Burnet, thair; Elspet Makbeith, thair; Elspet Nishie, spows to Johne Mathew, in Aulderne; Mariore Taylor, [spous] to Robert Barrie, ther; Bessie Hay, ther; Archibald Man, ther; Mariorie

¹ Pining; lingering sickness; gradual wasting away.

² Stubble.

³ The Dunbars of Balnaferrie and

Westfield were heritable SHERIFFS of Murray.

⁴ A considerable part of this paper having been destroyed by mice, the Editor has supplied the blanks from conjecture, after a careful comparison with other similar Examinations. The words so supplied are put within brackets.

⁵ Without the application of TORTURE, or other 'legal compulsi-

touris;' voluntarily.

⁶ Drugs; enchanted charms.

⁷ Nolt, cattle.

⁸ Farm stock; 'bestial.'

⁹ A

pretty experiment, indeed, for enticing a novice to be initiated!

Man, his daughter, ther; Elspet Makhomie, relict [of] wmq¹¹ Allexander Hucheson, ther; Bessie Friece, spous to Johne Gilbert, ther; Iffobell Friece, spows to Androw Miller, ther; Agnes Torrie, spows to William Yowng, ther; Elspet Chifolme, spows to vmq¹¹ Makhomie, ther; Allexander Elder, in Earlseat; Janet Finlay, his spows; Elspet Laird, in Miltoun of Moynes; Johne Robertson, in Leathin; Grifall Sinklar, his spows; Allexander Sheipheard, in Miltoun of Moynes; Janet Man, his spous; Mariorie Dunbar, in Brightmanney; Kyllie, in Vester Kinstry; Allexander Ledy, ther; Elspet Gilbert, in Leathinbar; Agnes Brodie, in Leathin; Janet Smith, spows to Robert Frazer, in Arry; Bessy Peterkin, in Torrich; Allexander Bell, in Drumdewin, a charmer; Iffobel Nicoll, in Lochloy; Bessie Young, ther; Elspet Falconer, spows to James Inglis, in Penick; Bessie and Margret Huchsons, ther; Walter Ledy, ther; wer all ther that night. Johne Taylor, my husband, wes then Officer; bot Johne Yowng, in Mebestoune, is now Officer to my COE[VEN.] Quhan I cam first ther, THE DIVELL called tham all be thair names, on the book; and my husband, than [OFFICER,]¹ called thame at the dore. And when that was done, Bessie Wilson, in Alderne, sat down nixt THE DIVELL;² [Bessie] Hay, thair, sat nixt him, on the vther sid; Janet Burnet sat nixt hir; and Elspet Nishie, spows to the said Johne [Mathew,] sat nixt Bessie Wilson, hir mother. She wes THE MAIDEN to hir motheris Coeven. All the rest sat downe [as] they to cam.³

The nixt thing, efter quhat wes done that night, THE DIVELL lay with them all abowt. And then for me, my husband presented me, and he and Margrat Wilson, in Alderne, held me vp to THE [DIVELL to] be baptised: And efter I haid put my on hand to the soallis of my foot, and the vther hand to the [crown of] my head, and renuned my baptisme, and all betuixt my two handis to the Divell, the Divell [marked me] in the shoulder, and fuked out my blood with his mowth, at that place; he spowted it in his hand, and [sprinkled it] on my head. He baptised me thairvith, in his awin nam, 'CHRISTIAN.' And than immediatlie thairefter, [they all returned] each to ther awin howffis. Within fyw dayes thairefter, he cam to me to my hows, quhan my hufb[and] was furth, in the morning, at the plewgh, to fie the mark quhich he gaw me; and he did lye with me in the naked [bed,] and haid carnall cowpulation with me; and gaw me ane piece of money, lyk a testain. He was a meikle, roch, blak man, cloven footed, werie cold; and I fand his nature within me als cold as spring-well-water. He promeisit to fie me again, within eight dayes, quhilk he did, and haid carnall cowpulation with me again, and gaw me an vther piece of money, lyk the first; bot they both turned read,⁴ and I got nothing for thaim. He cam again within twantie dayes, and still⁵ once in the twantie dayes, and lay with me at each tym continually.

[We] met in the place of Darnvay⁶ nixt that, and thair we did eat and drink, &c. Efter that, we vould still meit [euerie] ten, twelve, or twantie dayes continwally.

Whan we haid Great Meittingis, Walter Ledy, in Penick, my [huf]band, and Allexander Elder, nixt to THE DIVELL, wer Ruleris; and quhan ther wold be but fewar, I my self, the deceassit Jean Suthirland, Bessie Hay, Bessie Wilfone, and Janet Burnet wold rule thaim. The first thing that we did, except the taking of meat, wes taking of the cornis of Drumdewan, and [then] pairted that amongft ws. 2dly, We shoat noat⁷ in plewghes. 3dly, Agnes Grant, who wes brunt on the hill of,⁸ gott hyre from Elspet Monro, to destroy the Lairdis of Park and Lochloy, and thair [posteritie.] And then I and my husband, Elspet Nishie, and Bessie and Margret Wilfones, in Alderne, con[veened] our selwes with THE DIVELL, in Elspet Nishies hows; and then touk dowgis flesh, and sheipis flesh, and [haked] it werie smail with an aix, and seithed it an haill fornoon in a pot, among water: And than I took it owt; and THE DIVELL, with his awin hand, did put it in a sheipis

¹ See *Issobell Gowdie's CONFESSIONS*; where it is stated that this worthy was OFFICER to a Coven. being MAIDEN to the Coven. ³ As they happened to come in; promiscuously. ⁴ Red.

⁵ Uniformly; ⁶ The seat of THE EARLS OF MORAY. See *Issobell Gowdie's CONFESSIONS*. ⁷ Shot nolt, or cattle, in ploughs, with elf-arrows. ⁸ Left blank, in the original.

² She ⁵ Uniformly; ⁷ Shot nolt, or

bagg, and he steiring it still¹ abowt with his handis. We wer wpon our kneyes, ovr hair about ovr eyes, and ovr handis lifted up, and ve looking stedfastlie wpon THE DIVELL, praying to him, repeating the vordis quhich he learned vs, that it sould kill and destroy the Lairdis of Park and Lochloy, and thair meall-children and posteritie. And then we cam to Inshoch, in the night tym, and skatered it wpon, and down, abow, and about the gait, and vther places quhair the Lairdis and thair sones wold most haunt; and then ve, in the lyknes of crowes and rewkis stood abow the gait, and in the treis oposit to the gait. It wes apointed so, that if any of them sould twitch² or tramp wpon any of it, als veill as it or any of it to fall on thaim, it sould strik thaim with byllis,³ &c. and kill them: Quhilk it did; and they shorthlie died. We did it to mak that hows airles.⁴ It wold wrong non els bot they. And it wes Keathren Sowter, that wes brunt,⁵ that [shot] William Hay, the last Laird of Parkis brother, for⁶ on Gilbert Kinley. It wes only that bagg that wes the death of both the last Lairdis of Park.

Alfo, four yeir since, I and my husband, Iffobell Gowdie, spows to Johne Gilbert, in Lochloy, and Bessie and Margret Wilfones, in Aulderne, maid [a pictur] of clay, lyk the Laird of Parkis eldest sone. My husband brought hom the clay in his plaid [newk. It] ves maid in my hows; and THE DIVELL him self with ws. We brak the clay werie small, lyk meil, [and] sifted it with a siew, and powred in vater amongst it, with wordis that THE DIVELL learned vs, [in the DI]VELLIS nam. I brought hom the water, in a pig,⁷ out of the Rud-wall.⁸ We wer all wpon ovr [kneyes,] and our hair about ovr eyes, and ovr handis lifted vp to THE DIVELL, and ovr eyes stedfast looking [vpon him,] praying, and saying wordis which he learned ws, thryse ower, for destroyeing of this⁹ Lairdis [meall] children, and to mak his hows airles. It wes werie fore wrowght, lyk rye-bowt. It was about the bignes of a feadge or pow. It was just maid lyk the bairne; it vanted no mark of any maill child, such as heid, face, eyes, nose, mowth, lippes, &c., and the handis of it folded downe by its fydis. It ves putt to the fyre, first till it scrunked,¹⁰ and than a cleir fyre about it, till it ves hard. And then we took it owt of the fyre, in THE DIVELLIS nam; and we laid a clowt abowt it, and did lay [it] vp on a knag, and sometimes vnder a chift. Each day we vold water it, and then rost and bek¹¹ it; and turn it at the fyre each other day, whill¹² that bairne died; and then layed it vp, and steired¹³ it not wntill the nixt bairne wes borne: And then, within half an yeir efter that bairn wes borne, [we] took it owt again out of the cradle and clowt, and vold dip it now and than among water, and beck [it] and rost it at the fyre, each other day once, as ve did against the vther that ves dead, wntill that bairn [died] also. ALL quhilkis of the premisses, fwa spokin and willinglie Confessit and declarit furth of the mouth of the said JANET BRED[HEID,] in all and be all thingis as is abow sett downe, I, the said JOHNE INNES, Notar Publict, haw writtine thir presentis, and with THE WITNESSES abownamet, in farder testimonie and witnessing of the premisses to be of veritie, We haw subscryuit the samen with our handis, [day, month,] yeir, and place abow specifeit.

JOANNES INNES, *Notarius Publicus*.¹⁴

HEW ROSE, Minister at Nairne, Attestis thir premisses, confessed in my presence, Aprile 15, 1662.

MR HARY FORBES, Minister of the Gospel at Old Earn, Attestis.

ARCHIBALD DUNBAR, witnes, Attestis. W. SUTHERLAND off Kinsterie, Attestis the premisses.

[JOHNE WE]IR, in Aulderne, Attestis; Confessed in my presence, Apryll 15, 1662.

J. COUPER, Attestes. W. CHALMER, witnes to the premisses, confest in my presentis, 15 of Apryll.

HEW HAY Attestes the premisses, Confest 15 Appryll, 1662.¹⁵

¹ Ever; constantly.

² Touch.

³ Boils.

⁴ Heirless.

⁵ For Witchcraft.

⁶ At the

instigation of.

⁷ Earthen jug, or jar.

⁸ The Rood, or HOLY-CROSS, well.

⁹ The present Laird's

male children. The last two Lairds are stated to have been destroyed by the charmed bag.

¹⁰ Got parched, or

shrivelled; *shrunk*.

¹¹ Bake.

¹² Every alternate day, until that child died.

¹³ Stirred.

¹⁴ The

long Latin docquet is annexed.

¹⁵ Some farther marking had at one time been on the margin; but only a few of the *letters* at the end of each line now remain. It appears to have been the Judgment of the Justice-depute, from a fragment of a Memorandum on the back of the CONFESSION; so that it is probable she had been tried at one of the

'JUSTICE-AIRS'—and of course would, on her own Confession, be condemned to be burnt.

No. VIII.

CONTINUATION OF No. XVIII. OF THE GENERAL APPENDIX OF
DOCUMENTS ILLUSTRATIVE OF GOWRIE'S CONSPIRACY.

(See Vol. II. pp. 299 to 313.)

WHEN the Editor was in the progress of completing his collection of materials for illustrating the truth of the EARL OF GOWRIE'S CONSPIRACY against KING JAMES VI, one of the Volumes of *Sir James Balfour's* MSS. had been misplaced. Since that time, however, the Editor has had the advantage of again inspecting that truly valuable repertory of historical information, and now submits a few more of those highly interesting Papers, which, he is happy to notice, place the conduct of the celebrated *Mr Robert Bruce* in a much more favourable point of view. In justice to the memory of that eminent individual, it has been thought proper to insert them in this Appendix. Throughout the protracted controversy between *Bruce* and THE KING, the latter, obviously, had the worst of the argument—and tyrannically put down his able but dauntless and pertinacious antagonist by a most unlawful stretch of arbitrary power, after he failed in all his attempts at foiling him with his own weapons.

The relentless persecution of *Bruce* must, assuredly, be accounted an additional blemish in the character of KING JAMES VI, by every unprejudiced person. The reader is once more referred to the text, and to the documents and authorities formerly quoted, in reference to this subject.

(18.) LETTER, *Mr Robert Bruce* to THE KING.¹

PLEAS 3OUR MAIESTIE,

WPON the directione send to me by 3our hienes CONSELL, I thought it meitt be my awin letter to testifie my resolutione to 3our M. in that mater of GOWRIE. 3our M. can not be ignorant in quhatt termes I passit my resolution at *Sanct Jonnestowne*.² That resolution is as zitt extant, subscrywitt be monie honest vitneffis. To that resolution, both in mater and maner, I adhear; and fra it I am nott myndit to pas, be GOD his grace. This resolution gaue 3our M. perfytt contentment than, and I doubt nott bott itt vill do the lyke zitt. So luiking that 3our MAIESTEIS scruple falbe fullie satisfied, in that mater, I rest,

3our M. his most humble and obedient subiect,

ROBERT BRUCE.

TO HIS MAIESTIE.

(19.) LETTER, *Mr Robert Bruce* to THE PRIVY COUNCIL.³

PLEAS 3OUR HONORIS,

I RECEAWED 3our Letteris on Setterday the 13 off this instant; and for fatisfactione thairoff I haue directed my Letter, conteining my avin⁴ resolution in that mater, unto his M. My resolution nov is relative to my resolution att *Sanct Jonstoun*, quhilk vas dyttit⁵ by HIS MAIESTEIS selff, and subscrywet by monie honest vitneffis (besynd me) quha ar zitt liewing. This resolution gawe his M.

¹ From Orig. preserved among the *Denmylne MSS.* Adv. Lib. A. 2. 52. No. 25. It is undated. ² Perth, having been dedicated to St John as Patron Saint, was long known by this name. ³ From the same Coll. No. 26; also undated. ⁴ Own. ⁵ *Endited*, composed.

perfyt contentment then, and I doubt nott bot itt will do the lyk zitt; for vnto thatt refolutioun I adhear both in matter and maner; and I am readdie to testifie the fame, so oft as his M. pleases, by my awin hand wreitt. Sa, luiking that 3our honoris fall not be forder trublit in that mater, I rest,

3our honoris to be commandit to his povar, in God,

To HIS M. most honorable PRIUIE CONSELL.

ROBERT BRUCE.

(20.) LETTER, *Mr Robert Bruce* to THE KING.

MAY IT PLEIS 3OUR M.

HEIRING that my cuming to *Aberdeine* was interpret to spring of contempt, I thocht it my bundin dewtie to purg my selfe to pe vttermoost thairof, for I compt contempt of GOD and his Lewtennent pe heigheft cryme that is; And thairfoir, for purgation, I say, that quhatsoever is done with ane warrand of GOD and man can nocht incur pe fuspition of a contempt, lat be ane actuall; and in deid, gif thair had bene ane prescription or limitation of tyme in any Licience, I had failzeit in passing pe boundis thairof; 3ea nocht onlie that, but I avaittit upon pe proper tyme quharfoir my Licience wes gevin me, and tuik pe benifeit quhen pe necessitie of my infirmitie constranit me; and being moir respectiue than that, I tuik it nocht quhill THE BISCHOP OF MURRAY brocht me pe adwyse of pe BISCHOPPIS OF SANCT ANDROS and GLASCOW to do so: And giff I had refaut pe meineft signification that culd be, that pe imbracing of pe benifit at that tyme wald nocht stand with 3our HIENESS contentment, I wald most glaidlie haiff abstanit thairfra; for I haif layed my compt, be GODIS grace, never to involue me in that giltines. So, to end, thair is no thing done be me quhairfoir my former benifeit suld be retrenchit; and most humilie I creave that 3our M. censure go nocht befor my procuring, but that my reparing to *Aberdene* for my better helth and confort of my wyff and childrin may stand with 3our M. fauor. So resting ever,

3our M. most humbill subiect and orator,

INDERNES,¹ ye 20 viij of Merche (1606?)

ROBERT BRUCE.

To THE KINGIS most excellent MAIESTIE.

(21.) SUPPLICATION, *Mr Robert Bruce* to THE PRIVY COUNCIL.²

MY LORDIS OF SECREIT COUNSALL, vnto your lordschipis humblie menis and schawis I, your feruitour, MR ROBERT BRUCE, Minister, That quhair, the last day when I wes brocht befor your ll., I wes commandit and ordaneit be 3our ll. to addresse my selff to the burgh of *Innernes*, and thair to remane and within four myllis abute the fame, dureing his MAIESTEIS will and pleasour; lykeas, the tyme for my addresse thair daylie approtchis; quhairvnto, althocht I acknowledge my selff bundin in conscience befor GOD and in my alledgeance to THE KINGIS MAIESTIE, my Souerane, to gif all dew obedience, as by GODIS grace I mynd neur to be diffobedyent to HIS MAIESTIE or your ll., in ony of your ll. directionis, in this kynd; yitt, the indispositioun and inhabilitie of my persone, conioyned with my grite aige, forceis me humblie to schew vnto your ll. how vnable I am to vndertak and to vnderly fuche a jorney and charge; ffor I am become so feible and waik,³ and my aigeit and weyryed⁴ persone is so far worne and waisted with greif, cair, and vtheris visitationis quhairwith it hes pleasit THE LORD in his mercye to chastice me, that hardlie dow⁵ I travell any quhair, without haifard of my lyff: And yf it fall pleas GOD to visite me with seiknes, outhat at *Innernes* or be the way, it is not liklie that I fall ouercome⁶ the fame. And tuotching the imputatioun layed vpoun me, whilk wes the caus of HIS MA^{TEIS} offence,⁷ and of this hard course tane with me, I thank GOD I wes frie and innocent thairof, and I cleirit my selff of the fame in your ll. presence, it being a poynt verrie far fra my professioun to be a movair or steirair⁸ vp of Seditioun, as HIS MA^{TIE} wes informed of me; and fra my hairt I deteast fuche Seditious practizes, as being most impious and wicked, and repugnant to the

¹ Inverness. ² It is unsigned, and no deliverance indorsed, but it is evidently the original, having the marks of the ribbon usually passed through Letters and bills, &c., when sealed and sent to a distance. ³ Weak.

⁴ Weary; spent.

⁵ Am I able to travel.

⁶ Survive, recover.

⁷ Displeasure.

⁸ Stirrer.

Holy Ordinanceis of God, quhairby we are commandit to gif all dew obedyence to our superioris. And as I schew vnto your ll., my comeing to this burgh the tyme of the Parliament wes vpone a meere necessitie, and to eschew the danger of horneing, quhairwith I wes threattned, for xxij merkis. And dureing the schorte tyme of my aboade heir, whilk wes not xxxvj houris, I spak not with a Parliament man, except *the Lord Kilsyth*,¹ whome I employed to be cautioner for me; and had no kynd of medling with the affairis of the Parliament, becaus thay concerneit me not; bot keipit my selff very quyet till my away-going. And dureing the tyme of my Warding in *the Castell of Edr*, my cariage wes so modest, calme, and peceabill, withoute medling with thir matteris of *THE KIRK* now in questiou, as I hoip nothing can be obietit vnto me. And yf *HIS MATIE* wald be gratioullie pleasit to suffer me spend the few remanent of my aigeit and weyrysome dayes at my awne house, I wilbe verrie glaid and willing to be perpetuallie confynned thair, and tua myllis thairabout; and I fall neuir transcend that boundis, nor medle with ony matter concerneing the pollicie and governement of *THE KIRK*. Most humblie beseiking your ll. to haif consideratioun of this my estate; and outhir be your selffis, or be your intercessioun at *HIS MAIESTEIS* handis, to grant me some ease and releiff in this heaue charge layed vpoune me, whilk wilbe my vtter ouerthrow and wrak. And your ll. anfuer.

(22.) LETTER, *The Archbishop of St Andrews*² to *THE KING*.

MOST SACRED SOVERANE,

It may please your most excellent *MATIE*, I haive seene your *MATIES* direction sent to *THE EARLE OF DUNBAR* about *MR DAVID LYNDSEY* his intemperance in preaching. I haive tane baldnes to give anfuer and avyse, in maist humble and submisf maner. The man vas input³ be your *MATIE* vpon my rasche and oft repeited sute. He hes oft done veill aganes the seditious, albeit inconstantlie. The vordes he spak, to my gryt greiff, wer to reprehend your *MATIE* for toleratioun and advancinge off *PAPISTES*, quha ever foght your *MATIES* wrak; and this was efter pat I had congratulat to the peipill your *MATIES* lait wonderfull delyverie.⁴ Efter Sermon, I convened *the Bailleis*, and *Counfall*, and sent pame to him to querrell him for his vnreverent usage; quhilk wrocht this effect that the daye follovinge he preached ane palinod,⁵ sa impudentlie flatteringe to your *MATIES* praise, and vilipendinge all the Princes of Europe be name, in your *MATIES* respect,⁶ that all men esteimed he vas makand penance for the former dayes insolence, with supererogatioun.

This his foolie⁷ is nocht worthie of your *MATIES* wrathe; and as for me, I will nocht give advyse to honour sick ane⁸ with publict censure, at sic ane tyme. I haive advysed with your *MATIES* most trustie servantis of our societie, quha thinkes meit to transport him, but noyce,⁹ to a landwart¹⁰ Kirk; and to assume to me ane¹¹ mor vyse¹² and fast,¹³ quhilk your M. fall see accomplished, but your *MATIES* empeschement.¹⁴

My Lord of Dunbar hes employed him selff sa faythfullie, eafaldlie,¹⁵ and fortunatlie, in this lait service, that I presume to advyse your *MATIE* to give him credit in your *MATIES* service, in our gryttest turne, in this Parliament; for quatsfumever is glansed to your *MATIE* in the contraire, is aither *panici terrores*, or prevaricatioun.

SIR, I lacke moyen to do quhat I wald in your *MATIES* service. I heir, daylie, foule vanities quhilkis I think I am called to repreffe. I want formall rycht and rent. Supplie this, SIR, in this your approching Court, and than ze fall nocht neid to writ hither; but the punisched fall seik thither toward your *MATIE* for obteneinge pardone. Finallie, your *MATIES* erandis in the credit off *the Earle of Dunbar*, or of ane off lyk dispositioun, is heir possibill and easie. *Non debet sub tali tantoque*

¹ Sir William Livingston, one of the Ordinary Lords of Session, who succeeded Sir John Preston, Lord Fentonbarns, Jun. 6, 1609. His son was created Viscount of Kilsyth and Lord Campsie, by patent, Aug. 17, 1661.

² George Gladstones, translated from the See of Caithness anno 1606, but not consecrated till anno 1610. Died May 2, 1615. ³ Inducted, put in. ⁴ From the Earl of Gowrie's Conspiracy. ⁵ Lat. *palinodium*, recantation after professions of repentance. The term is still used both in the Civil and Ecclesiastical Courts. ⁶ In comparison to the King. ⁷ Folly. ⁸ Such a one. ⁹ Translate him without bustle or noise. ¹⁰ To a country or landwart Parish Church. ¹¹ One, viz. another Minister. ¹² Wise. ¹³ Steady, sure.

¹⁴ Without hindrance or trouble to your Majesty. ¹⁵ Sincerely, without duplicity, (q. d. *one-foldly*,) in contradistinction to *two-fald*, double, deceitful. The word is now nearly obsolete.

principe precarium esse imperium. This,¹ I humbly recommend your MATIES person and estate to God his merciful Providence, I remaine,

Your MATIES most humble orator and obedient servant,

EDINBURGHE, nynt of Februar, 1606(-7.)

To THE KINGIS most excellent MATY.

SANCTANDROIS.

No. IX.

BOND by JOHN fifth EARL OF CASSILLIS, to his Brother HEW KENNEDY, commonly called THE MASTER OF CASSILLIS, to pay him and his accomplices 1200 merks yearly, &c. to commence from the date of their taking the Life of THE LAIRD OF AUCHINDRAYNE.

(See VOL. III. pp. 124, 581, &c.)

[In the preceding Collection, and also in the 'Historical and Genealogical Account of the principal FAMILIES of the Name of KENNEDY,' recently published,² all the incidents then discovered relative to the accumulated acts of villainy perpetrated by THE LAIRD OF AUCHINDRAYNE and his son have already been disclosed. The public being likewise in possession of the leading features of this extraordinary case, from the graphic pen of SIR WALTER SCOTT, who has prefixed an introductory notice to his dramatic poem, 'AUCHINDRAIN, or the Ayrshire Tragedy,' it is altogether unnecessary to attempt even a brief sketch of their lives and crimes in this place.

The Historical Account above referred to, and the present Collection, contain a great variety of Documents which have been brought forward, alike to illustrate the Trials of the Laids of Auchindrane, and the extraordinary state of society and manners in the important district of Carrick and the adjoining shires. But no Papers which have hitherto been discovered appear to the Editor to afford so striking a picture of the savage state of barbarism into which that country must have been sunk, as the following BOND by the EARL OF CASSILLIS to his brother and heir apparent, Hew Master of Cassillis. The uncle of these young men, Sir Thomas Kennedy of Culzean, Tutor of Cassillis, as the reader will recollect, was murdered, May 11th, 1602, by Auchindrayne's accomplices.

The MASTER OF CASSILLIS, for many years previous to that event, was in terms of open personal hostility to his brother. During all that period, however, the Master maintained habits of the closest intimacy with Auchindrayne and his dissolute associates, and actually joined him in various hostile enterprises against his brother the Earl.³ The occurrence of the *Laird of Culzean's Murder* was embraced by their mutual friends as a fitting opportunity to effect a permanent reconciliation between the brothers; "bot (as 'the Historie' quaintly informs us) the cuntry thocht that he wald not be eirnist in that cause, for the auld luiff betuix him and Auchindrayne."⁴ The unprincipled Earl, (whose *sobriquet*, and that of some of his ancestors, was *King of Carrick*, to denote the boundless sway which he exercised over his own vassals and the inhabitants of that district,) relying on his brother's necessities, held out the infamous bribe contained in the following Bond, to induce his brother, the Master of Cassillis, to murder his former friend, the old Laird of Auchindrayne. Though there be honour among thieves, it would seem that there is none among assassins; for the younger brother insisted upon having the price of blood assured to him by a written document, drawn up in the form of a regular BOND!

Judging by the Earl's former and subsequent history, he probably thought that, in *either* event, his purposes would be attained, by "killing two birds with one stone." On the other hand, however, it is but doing justice to the Master's acuteness, and the experience acquired under his quondam preceptor Auchindrayne, that we should likewise conjecture that, on his part, he would hold firm possession of his BOND, to be used as a checkmate against his brother, should he think fit afterwards to turn his heel upon him, or attempt to betray him into the hands of justice.

The following is a correct copy of the Bond granted by the Earl, as transcribed from the original.]

WE, JOHNE EARLE OF CASSILLIS, Lord Kennedy, &c., Bindis and Oblissis ws, that howfove our broder HEW KENNEDY of Brounfoun, with his complices, taikis THE LAIRD OF AUCHINDRANEIS lyf, that we fall mak guid and thankfull payment to him and pame of pe fowme of tuelff hundreth merkis, zeirlie, togidder with corne to sex horfis, ay and quhill⁵ we reffaw⁶ pame in houshold with our self: Beginning pe first payment immediatlie after pair committing of pe said deid. ATTOUR,⁷ howfove we reffaw pame in houshold, we fall pay to pe twa serwing gentillmen pe feis, zeirlie, as our awin houshold serwandis. And heirto we Obliss ws, vpoun our honour. SUBSCRIVIT with our hand, AT MAYBOLE, pe ferd day of September, 1602.

JOHNE ERLE OFF CASSILLIS.

¹ Thus. ² The Quarto Edition, Edin. 1830. ³ For the confessed purpose of taking his life, in following out their deadly Feud. ⁴ Historie of the Kennedies, p. 59. ⁵ Aye and until. ⁶ Receive. ⁷ Moreover.

GENERAL INDEX.

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GENERAL INDEX

TO CRIMINAL TRIALS, &c.

DURING THE REIGNS OF
KINGS JAMES IV AND V, MARY QUEEN OF SCOTS, AND KING JAMES VI.

* * * THE reader, in consulting the following INDEX, is requested to remark, that owing to the Editor's having been under the necessity of sending the TRIALS which occurred during the reign of KING JAMES VI. to press, before the introductory portions of this work were compiled, it became requisite for him to page the earlier reigns in Vol. I. thus, * 1, * 2, &c. In order to avoid the annoyance and trouble of consulting *separate* INDICES of persons and matters, the Editor has bestowed a great deal of time and labour in constructing an extremely copious GENERAL INDEX, which he may venture to say embraces every circumstance contained in the work, which is at all likely to be esteemed interesting and useful to the historian, lawyer, antiquary, or genealogist. The most prominent of the ancient words and phrases, and the leading historical facts, superstitions, &c., have also been incorporated, so as to render the work more acceptable, and also as useful as possible to the public, as a book of reference.

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CRIMINAL TRIALS

AND OTHER PROCEEDINGS

BEFORE THE

HIGH COURT OF JUSTICIARY IN SCOTLAND.

**TRIALS DURING THE REIGNS OF
KING JAMES THE FIFTH AND MARY QUEEN OF SCOTS.**

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M.D.XXXVII.—M.D.LXVIII.

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